FEDERAL PROGRAMMING ASSISTING SMALL BUSINESSES IN DRUG ABUSE PROBLEMS

HEARING

BEFORE THE

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OPPORTUNITIES, AND ENERGY

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FEDERAL PROGRAMMING ASSISTING SMALL BUSINESSES IN DRUG ABUSE PROBLEMS

FRIDAY, MARCH 8, 1991

House of Representatives,
Subcommittee on Regulation, Business
Opportunities, and Energy,
Committee on Small Business,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:00 a.m., in room 2359-A, Rayburn House Office Building, Hon. Ron Wyden (chairman of the subcommittee) presiding.

Chairman Wyden. The subcommittee will come to order.

This morning the Subcommittee on Regulation examines a growing problem facing America's small businesses—widespread drug and substance abuse in the workplace. In particular, the subcommittee is concerned with the performance of Federal agencies and programs charged with reducing the demand and the supply of drugs and with assisting businesses in combating workplace substance abuse.

More than 3 years ago, the National Drug Strategy designated the workplace as a top priority in its blueprint for the multi-billion-dollar per year, Federal war on drugs.

But, after a lengthy investigation, this subcommittee has found that, in reality, Federal support for reducing drug abuse at the Nation's small businesses is mere cheerleading. Substance abuse in small business is a health care problem of forest fire proportions, but the Federal Government is attacking it with a squirt gun.

This crisis situation demands real-life programs and direct assistance to identify, counsel, and treat workers. What we have, instead, is little more than hot air and shallow public relations, and, in the Chair's view, the results are inescapable; for workers who do drugs, America's small businesses are becoming the employers of last resort.

Big businesses, the experts tell us, have gotten very good at screening out drug-abusing job applicants. Just as surely, those same analysts say drug-troubled workers are falling into the ranks of small business. The fact is that if millions of these workers cannot get help in the small business sector, they will not get help at all.

Two out of three substance abusers in this Nation have jobs, and well over half of our work force is in the small business sector. Yet, less than .0002 percent of the administration's drug war budget goes for direct assistance, demand-reduction programs targeted to the workplace. Ironically, the administration now says that even this is too much. This paltry funding is essentially eliminated in the President's 1992 budget.

Perhaps the small business problem is news to the Federal drug policy managers. They declined the subcommittee's invitation to testify today. But the fact is that drug abuse is taking a huge toll on our small business sector. The cost of substance abuse to our economy could be as high as $140 billion a year in lost productivity, job-related accidents, increased absenteeism, and increased medical bills.

This morning, we will hear from business owners whose firms were nearly wrecked by employee substance abuse. They will detail the human tragedies as well as the management dilemmas faced by entrepreneurs fighting on the drug war's frontline. In many cases, these small business managers, trying to meet a payroll, are forced to deal simultaneously with the shrapnel of the drug war: Overdoses, alcoholism, and suicide.

Most small businesses fight this war with few resources and little access to professional counseling.

Again and again, our investigation found that small business owners put months of effort into trying to locate substance abuse programs that would meet their needs, only to come up empty-handed, and it is easy to see why.

According to the staff memorandum developed for this hearing, only 6 percent of the Nation's small businesses have such programs. Obviously, this leaves millions of substance-abusing workers without access to help.

The subcommittee's investigation has found that, literally, the Federal Government has simply forgotten the small business front in the war on drugs.

At the Small Business Administration, the principal advocate for small businesses in America, our investigators found direct help to employers is nonexistent, and information scarce. Years into the war of drugs, the SBA will tell us today that they are only now just beginning to deal with the problem by referring calls for help to other agencies.

At the Department of Labor, there is currently $2 million per year available to fight drugs, and, as I mentioned earlier, this year's budget will redirect those funds to other projects.

At the National Institute on Drug Abuse, conferences are held to supply information, but even the institute admits that they have been singularly ineffective in reaching the small businesses who need them the most.

Finally, at the Office of the Drug Czar, the agency charged with coordinating this war, frequent requests by subcommittee staff for information on programs, services, and its coordination role were met with a deafening silence. Interestingly enough, they seemed quite interested in reviewing and approving the testimonies for today's hearing submitted by our other Federal witnesses.

The subcommittee will also hear from State substance abuse program directors. These State officials are concerned that the administration's drug-free workplace rhetoric far outstrips its efforts. They know first-hand the difficulties small businesses face when confronting employee substance abuse, and make it clear in their testimony that they believe that the Federal Government should be a better partner in State and private efforts to fight drugs in small businesses.

Millions of their employees have an illness which, if left unchecked, could force them from the ranks of the working. The Chair believes that the masters of the National Drug Strategy should give small businesses more than lip-service, and get serious about using the workplace to reach troubled employees.

Properly utilized, small businesses are an ideal venue for treating substance abuse and reducing drug demand.

By acting now, jobs and lives can be saved. The alternative is to rely on our jails to treat substance abusers, and drain badly needed workers from our small businesses.

Finally, the Chair is disappointed to note that a key player in this matter—the Federal Office of National Drug Control Policy, the Drug Czar—has declined to testify before this subcommittee. Unfortunately, this seems to reflect their level of interest in and commitment to this important issue.

I am very pleased that two fellow Oregonians, John Goche and Jeff Kushner, are here to testify on our first panel. Now, I would like to invite those witnesses, Mr. Kushner, Mr. Goche, Mr. Harold Green, Mr. Floyd Pond, and Ms. Marguerite Saunders, to come forward.

First, I would just like to take a moment for a formal introduction. This subcommittee has, in its tenure, worked to address problems in a bipartisan way. I am pleased that Mrs. Jan Meyers is today joining the subcommittee as ranking minority member. Mrs. Meyers has a long, legislative track record which dates back to her time in the Kansas Legislature where she chaired key committees dealing with health issues. I am not sure she knows this, but I am a native of Kansas, born in Wichita.

Mrs. MEYERS. I just knew it.

Chairman WYDEN. It is going to be a real pleasure to have you join us, Jan. We welcome you as both ranking minority member and for any statement you would wish to make at this time.

Mrs. MEYERS. Thank you very much, Ron.

I am very pleased to be the new ranking member of this committee. This topic, particularly, is of tremendous interest to me because, as you mentioned, I was chairman of Public Health and Welfare in the Kansas Senate, and authored the driving under the influence law in the State of Kansas. That bill did provide moneys for treatment.

I do look forward to working with you to examine a variety of issues that are of importance to small business. As you have stated, the topic of our hearing this morning is drug abuse in the small business workplace and what is being done at the Federal level to help combat this problem.

Drug use in the workplace costs this country billions of dollars every year in lost productivity, increased health problems and workplace accidents, to say nothing of the problems it causes us at the Federal and State level with associated family problems.

Contrary to the typical portrayal of drug abusers, many manage to hold down full- or part-time jobs, masking their destructive problem from their employers.

I look forward to hearing the testimony of the expert witnesses the chairman has assembled today as we attempt to pinpoint what assistance is currently available to help small businesses combat workplace drug abuse and what future measures can, or perhaps should, be implemented to step up these efforts.

Thank you very much. I am glad to be here, Mr. Chairman.

Chairman WYDEN. Jan, thank you. I think this is just the beginning of an effort to tackle a variety of issues this session. I am very pleased that you could be here today.

Let's have our first panel come forward, Mr. Goche, Mr. Kushner, Mr. Green, Mr. Pond, and Mrs. Marguerite Saunders.

We welcome all of you to the subcommittee. It has always been the practice of this subcommittee to swear in all the witnesses who come before the subcommittee.

Do any of you have any objection to being sworn as a witness today?

Will you please rise and raise your right hand.

[Witnesses sworn.]

Chairman WYDEN. I guess this is one of the prerogatives the Chair can exercise from time to time, so, let's begin with the Oregon witnesses, and then we will move toward the eastern seaboard.

Mr. Goche, we welcome you.

I think the staff has told you that I would like each of you to try to limit your remarks to about 5 minutes. We are going to place your prepared remarks into the record in their entirety.

I know there is almost a biological urge to read everything on that printed page before you. We are going to put all of that into the record.

If you can take 5 minutes or so and just talk to us about what your principal concerns are, I think that would be most helpful. That will allow time for some questions to you.

Let's begin with you, Mr. Goche.

TESTIMONY OF JOHN E. GOCHE, PRESIDENT, RAPID BIND, INC., PORTLAND, OR

Mr. GOCHE. Thank you, Mr. Chairman.

I am here today, more or less, I believe, to tell a war story. I am a small businessman who has been through it. Hopefully, what I have to say will help other small businesses.

In late 1985 and late 1986, Rapid Bind, the company I own, employed 21 people. Our drug problems were severe. We knew if we drug tested, at least half of the people would test positive. After loss of work and frustration, 5 years later, we still do not have a policy in place, but we are getting a lot closer.

The problem first started out with a few people. We had a suspected dealer on the floor.

The problems were severe. At that time, I started looking for some help. There virtually was nothing available in 1986.

Through the Pacific Printing Industries, I was able to locate a counselor who came in. We brought both our shifts together, and I introduced the counselor. Then I left the meeting because I did not want the employees to feel uncomfortable talking in front of the old man, so to speak.

The meeting went on for an hour and a half. After that, several people stayed, and several called the counselor later. Before the meeting, the peer pressure on the floor, especially among the 19- to 21-year-old people was "use" rather than "don't use."

The pressure started to change gradually to "don't use" rather than "use." It was just the one meeting with the counselor. She didn't really talk about drugs as much as she talked about safety and using drugs in the workplace. In our business, there are a lot of dangerous machines where people can be severely injured if they are not real attentive.

At that time, we also started working on a personnel policy manual. There was not much available. We borrowed one from a company about twice our size. We put that into effect 2 years later. We used the strongest language legal counsel would allow. I wanted to go stronger, but they would not let me say what I wanted to say about substance abuse. The personnel policy manual has helped.

In July 1989, we had a traumatic experience. A 25-year-old employee, who had been with us 6 years and had a wife and 9-month old child, committed suicide.

We were destroyed as a company emotionally. We could not produce a product. We tried, but it did not work.

I tried checking through agencies and friends and, finally, through an associate was able to locate a counselor. Again, we brought the crews together. When that meeting was over it was the first smiles I had seen on the floor in a week.

The counselor came back and talked to people one-on-one. The reason I brought this out is that it started to show up the points that employee assistance programs [EAP's] were probably the answer to handling this sort of problem.

From there, we started several business meetings in the fall of 1989. The inplant managers had a speaker from the EAP Association. We found the Oregon Truckers Association had set up an EAP, but was unable to find out what they had done.

Later, at a nuts and bolts meeting, which is a printing industrial forum, a committee was organized to represent the Pacific Printing Industry [PPI]. A committee was formed of which I was made a member.

We sent out inquiries to the members. We received responses indicating 13 firms were interested in representing about 400 employees. Only three firms in the Pacific Printing Industries had the EAP Program in place. I believe we have about 335 firm members.

We put proposals out to the EAP's, and we did not know what was going to come back. We were originally talking about 400 members.

We were shocked. We had 15 proposals come in. We narrowed it down, interviewed, and selected an EAP. It was approved by the PPI board, and the program went into effect in August 1989.

We have 650 members in that group, and, frankly, we have not done a very good job. We could easily have twice as many members if we had promoted it properly.

An EAP provider has helped us considerably in setting up a drug testing program, but we are still not there. It is difficult in a small business.

In my firm, we have 35 people. With only three people in the office, we just don't have that extra person to put together the policies, to take the time to talk with EAP's, and go through the legal counsel. Time has just run out because we are a growing business.

A classic example is, right now, the final EAP language from the attorney is on my desk, and it has been there for 30 days. I have to run it back through the EAP for approval. Then the attorney has to look at it, and the EAP has to reapprove it. You run in circles.

Our company appears to be a role model because the EAP Program is in effect. We did it with a small group of employers through PPI.

I just don't feel we have done enough. It has taken too long to put this together. We just have not gone about it properly. We are targeted as small businesses, pure and simple.

In the Pacific Northwest, if job applicants go to the phone company or any of the big firms, they will be tested, so, they don't apply. They come looking for the smaller companies that they know cannot afford to go into substance abuse testing.

Another problem is plain lack of awareness with small business owners. It is a massive project.

When I received a package from the Oregon Small Business Council, we started to put together our testing program. It was a massive packet for a small businessman to attack because there are so many ways to do it. The older owners are just not aware of the problems.

I was talking to a gentleman who owns a series of print shops in Oregon. He said, "I'm almost 62 years old. I have not been raised in this culture. I can be talking to an operator who is just flat stoned, and I don't have any idea."

Another example; I know of an associate of ours in Oregon that is a partnership. One partner says they have a severe alcohol problem on the floor and the other problem is the leader of the problem. They don't know what to do with it.

The Federal help in Portland is little, if any. I am not aware of any Federal assistance. The Oregon Small Business Council has been a help to us.

About the only way we can do it as a small group is through a trade association or a group of businesses. The problems are large, and the Federal help does not appear to be available.

I think the things that would help us are example packets, maybe some short seminars, 2-hour lunches, that sort of thing. Mailers to let the small business owners know what is available and direct contact and telephone calls that are the most effective.

The problems are difficult for the small businessman. We had to carve it out of the wilderness, so to speak. Anything that can help from the Federal Government would be a great help to us who are trying to make a living.

This does not shed a good light on the Federal programs, but that is the way it is. We have to do it on our own. If we can get some help, it would be appreciated!

[Mr. Goche's statement may be found in the appendix.]

Chairman WYDEN. Thank you very much.

I am very pleased that our colleague from New York, Congressman Serrano, can join us. Like Congresswoman Meyers, he comes with a long interest in fighting these problems of health care and drug abuse.

We welcome you.

If you care to make any opening statement, we would be happy to recognize you at this time.

Mr. SERRANO. Well, Mr. Chairman, let me thank you for your kind words and for your interest in this area.

As you well know, I represent the South Bronx, where, historically, this kind of a problem has become perhaps more famous than in other areas in the Nation.

Alchol and drug abuse in the small business workplace is an issue that the Federal Government just doesn't pay enough attention to. They pay attention to substance abuse in the school systems, in the community at large, in professional sports, but certainly for small business it is one that needs a lot of attention.

I am more than willing to work with you to see what it is that we can do to alleviate the situation.

Thank you.

Chairman WYDEN. I thank you. We do look forward to working with you. Your past involvement at the State level will be very useful. We appreciate your participation.

Mr. Kushner, we welcome you. It is a pleasure to have you. You have done outstanding work in the State of Oregon on the front lines of this battle. I have enjoyed working with you on a variety of issues.

Your prepared remarks are part of the record. You may highlight your major concerns for 5 minutes or so.

TESTIMONY OF JEFFREY N. KUSHNER, DIRECTOR, OFFICE OF ALCOHOL AND DRUG ABUSE PROGRAMS, STATE OF OREGON

Mr. KUSHNER. Thank you, Mr. Chairman.

It is a pleasure to be here today. I am most appreciative of your taking time on the subject area. We bring you greetings from the State of Oregon and Governor Roberts.

I think if you ask most managers in Oregon today, or at least many of them, what the impact of drug abuse in the workplace is, they would tell you that it certainly jeopardizes safety and productivity and impacts the morale of their employees.

Unfortunately, if you asked a lot of these managers what they are doing about the problem, their response would be "very little."

We know we cannot afford to accept "very little" as a response to this problem. I have included in my testimony a variety of pieces of data and research that have been done regarding the extent of alcohol and other drug problems in the workplace. I think most of you are familiar with some of that. There certainly is an excellent committee paper that summarizes this data as well.

Suffice it to say that drug-free workplace policy and its enforcement influences the degree of alcohol and drug abuse in the workplace. When guidelines for this are unclear or permissive, there will be a high rate of use and dependency that is going to occur.

On the other hand, when the rules are clear with good rationale and are consistently enforced with appropriate sanctions, then we will see that the rate of alcohol and drug use at the workplace will be considerably lower.

I presume this is one of the reasons why the Congress passed the Drug-Free Workplace Act, which, I believe, was a very important and major step in working with business and industry.

At the same time, however, many businesses have taken it upon themselves to implement programs that have substantially reduced alcohol and drug abuse in the workplace without the impetus of the Federal Government.

The Oregon Business Council, Oregon's largest businesses, NIKE, Intel, et cetera, implemented the program called "Fight back Against Drugs." This program encompasses six programs, and I have included these in my statement.

The first is to set in writing a policy on the use of illegal drugs. This policy should, of course, prohibit employees from using, selling, possessing, or being under the influence of illegal drugs on company premises and during work time and could result in disciplinary action.

The second principle is to state as part of that policy that any action could result in disciplinary action. That could include termination.

Third, is to take and pass a drug test as a condition of employment.

Four, conduct screen tests upon reasonable suspicion in the case of a lost-time accident.

Five is to provide the opportunity for rehabilitation for employees and their families and, six, is to establish an educational program for employees and their families.

Attachment three to my testimony, as I indicated to you, is what has happened since February 1989, again, regarding these 43 businesses, which are the largest in Oregon. I will summarize that for you.

Those 43 businesses now as of July 1990, 100 percent of their employees have access to treatment, either through an employee assistance program or a treatment program that has been contracted for by the business itself; 93 percent of these businesses now have extensive educational programs around alcohol and drug abuse and the problems it causes their employees; 73 percent now preemployment test applicants; 100 percent now have written alcohol and drug policies; and 80 percent test employees for cause.

I have included in my testimony examples of reductions in alcohol and drug use from a variety of standpoints as well as lost time accidents and days lost of employment.

You will note considerable increases in productivity as a result of the policies that have been implemented among the member agencies and companies.

What these big businesses are finding out is that applicants get up and walk away when they find out they will be preemployment tested. If big business in this country all have policies regarding alcohol and drug use, if they are all training their supervisors to identify alcohol and drug problems, if they all have education and treatment programs and are doing some level of drug testing, where will the drug user go?

We believe there is a strong potential for the drug user to end up working in small businesses in Oregon which in Oregon is over 95 percent of the businesses. We are probably the largest small business State in the country. So, we have to act to help our small businesses to work with this problem. Just because one lives in a rural area in this country, they are not exempt from alcohol and drug abuse problems.

Your General Accounting Office put out a report saying there is just as much drug abuse in rural areas as in urban areas and just as much crime because of alcohol and other drug use.

The point is, whether you are a big business or small business, urban or rural, you are vulnerable from employee drug use. We cannot afford to write this problem off in rural areas or among small business.

In a moment, I am going to tell you about a small business initiative in Oregon. Before I do, I need to express to you my disappointment in the Federal Government's response to the issue of helping small business develop drug-free workplace policies. It seems to me the Federal agencies seem to be enamored with working with IBM, GM, and all the large businesses in this country, but are doing very little for the little guy.

I queried the NIDA workplace policy office on two items several times in the past year and a half. I asked for two things: First, materials to help small businesses to develop drug-free workplace programs; and, second, materials to help businesses that employ primarily youth, particularly over the summer.

The final response as a result of my conversations and written communications with this office was, "Although we have been able to respond to the most global and generic needs in the field, we have clearly been unable to address many specialized areas of interest such as yours."

In November 1989, an article appeared in the employee assistance program association exchange publication. Three of the four pages describe programs, projects, and services of the NIDA workplace office.

I want to run through these 12 areas that were listed in the publication. I want to ask you how many of these 12 areas will help those 85 percent of the small businesses in this country that have 300 employees or less?

The first is a national hotline. The second is to work with other Federal agencies. Three, to implement research grants. Four, to implement national research conferences. Five, to work with the Department of Labor regional offices on initiatives. Six, drug-free workshops in 10 States. This may be the primary one that relates to small businesses. The seventh is guidelines for the development and assessment of comprehensive employee assistance programs. The eighth is a model plan for the drug-free workplace. The ninth is drug abuse curriculum for employee assistance professionals, and the tenth is participation in the EAP national conference.

The list goes on but, with one or two exceptions, none of these strategies will relate well to the John Does who operate small business. Then the issue of cooperation at the Federal level.

We have NIDA, the Department of Labor, the Small Business Administration. I hear there are extensive turf battles going on, very little cooperation regarding how we are going to solve the country's small business alcohol and drug abuse problems.

I have to ask why have we let this happen, and why has the Congress let this happen. We cannot afford to have inappropriate coordination at the Federal level. It is time for the Federal Government to get its act together to help small businesses and industry in this country.

Chairman WYDEN. Jeff, I wonder if you could summarize the Oregon program briefly. We will put it into the record. I think the red light went on and off and you were not finished.

Mr. KUSHNER. I will finish up quickly.

Our six-point plan in Oregon is, first, to survey small business to find out to what degree they have drug-free workplace policy in place, employee assistance programs, and to what degrees they are helping the broader communities prevent alcohol and drug abuse problems.

We are going to implement a media effort that has been initiated in the Portland area already, statewide. We are going to develop materials for small businesses on the issue of alcohol and drug abuse, drug-free workplace planning.

We are going to fund 10 demonstration projects with seed money to help small business form consortia to implement EAP Programs and develop policy, and, then, we will resurvey to find out to what degree we have been successful to meet the initiatives we talked about in the second point of this strategy.

Let me close by suggesting some options at the Federal level to help us with this problem.

First, someone, somewhere at the Federal level should inventory the country, talk to the chambers of commerce, Small Business Trade Association, and other small businesses and collect innovative approaches to this problem so they can be documented and replicated across the country.

Second, let's talk to small business owners themselves. Let's ask them what they think they need and try to respond to that.

Third, I would suggest that the National Institute of Drug Abuse, Department of Labor, and SBA get together and develop some guidelines for a small business drug-free workplace block grant that would be modeled after the Community Youth Activity Program block grant you passed in the Antidrug Abuse Act. That act has been instrumental in reducing drug use in young children.

I would suggest that with as little as $100,000 a State, we could implement great things to help small businesses across this country, with the help of the small business associations in our States, EAP chapters, and the chambers of congress.

Last, I think we need to develop materials aimed at helping employers who primarily employ youth in this country to develop materials, contingency contracts for our kids to sign to promise to remain alcohol and drug free.

I appreciate being here today. I stand ready to help in any way I can on this problem.

[Mr. Kushner's statement, with attachments, may be found in the appendix.]

Chairman **Wyden**. Mr. Kushner, you have given your usual excellent presentation. We are going to be working very closely with you at home and with the committee here in Washington.

We are going to recognize you in a minute, Mrs. Saunders, but I am very pleased that our colleague, Dave Camp from Michigan, has joined us. We welcome him to the subcommittee as well.

I believe he is a new member, replacing Bill Schuette from his home State of Michigan.

Dave, we welcome you to the subcommittee. Why don't you make whatever opening statement you think appropriate at this time.

Mr. **Camp**. Thank you, Mr. Chairman. I will make some brief remarks and submit my statement for the record.

I appreciate that you are holding this hearing. The scourge of drug use in the workplace is affecting all of us, our American work ethic, and, more importantly, the potential health and safety of Americans.

The Federal Government does need to offer help to small businesses in particular. I am pleased to be here at this hearing and submit the balance of my remarks for the record.

[Mr. Camp's statement may be found in the appendix.]

Chairman **Wyden**. Without objection, those remarks will be made a part of the record.

We welcome you to the subcommittee and look forward to your participation.

Mrs. Saunders, your remarks also will be made a part of the record. If you would like to highlight your concerns from one of our Nation's largest States, knowing your intensive involvement, that would be helpful.

TESTIMONY OF MARGUERITE T. SAUNDERS, DIRECTOR, NEW YORK STATE DIVISION OF ALCOHOLISM AND ALCOHOL ABUSE

Ms. **Saunders**. Thank you.

I bring greetings from Governor Cuomo. I will keep my remarks brief.

There are three points I would like to make. I would like to highlight the fact that New York State and its drug war include alcohol abuse. I think that is a key component that has been left out of the Federal drug war.

I know I have been somewhat critical of that in my written testimony, but I feel it is necessary to state this because it is the major issue that has been overlooked, particularly, since alcoholism is the major problem in the United States. It is the bigger problem. It is the gateway to other drugs.

In New York State alone, based on the latest Federal information, work-related costs associated with alcohol abuse is over $2 billion a year. This is 4½ times greater than the cost of other drug use in the workplace.

We are concerned that alcohol has literally been ignored by most of the country. We feel strongly that New York State has been in the forefront by pushing this effort. Alcohol inclusion is not popular. It is difficult to get people to acknowledge the fact that alcohol is an issue that has to be faced.

Alcohol is legal if you are over age 21. Because it is a legal drug, it becomes more difficult to have one focus on it. If you look at the issue that for those under the age of 21, it is illegal, then it becomes a different issue.

I have worked in both the drug and alcohol fields, worked with many, many people addicted to both drugs. I didn't find one person addicted to drugs who did not have a previous experience with alcohol. It is a continuing drug that, if they live long enough, phases out. I think it should be included in any initiative that is going to involve the drug-free workplace.

The other issue is New York State's current effort in working with EAP's. In 1988, Governor Cuomo and our legislature passed an EAP law. This law calls for the division to establish EAP consortia for small businesses, those with less than 750 employees and other organizations that have had difficulty in developing these programs.

In New York State, we have over 414,000 small- and medium-sized businesses. It is a major issue for us. We recently finished a comprehensive survey which showed that most employees, 7 out of 10, had access to EAP's; less than 1 in 100 employees of small organizations had such coverage.

Our EAP initiative funds 19 projects to serve such small businesses. The bulk employ high levels of females and minorities. Supported by a $500,000 appropriation, funds provided are on a sliding scale for 4 years, after which time they are expected to be self-supporting. In the first 9 months of operation, 19 projects extended EAP access to over 37,000 individuals who are employed by over 300 work organizations. So, you can see it is effective. We are pleased that this initiative is very effective in reaching women, who account for over 50 percent of EAP referrals.

In order to get the word out, the State launched the EAP media campaign last fall, in which we furnished information materials and limited paid advertisement within consortia communities. This effort included television, radio, print ads, billboards, transit ads, bumper stickers, and two brochures, samples of which are included in the information I provided with our written testimony.

We also furnish a toll-free information line. This provided our local businesses with a direction as to how to contact the State agency in order to implement and put in place the beginning of a consortia. We think the EAP consortia initiative is a demonstration that can provide new ways of assisting smaller businesses and the 4½ million New Yorkers who work for these small businesses.

We believe that any effort to assist small businesses to address the personal and financial impact of drug abuse problems must focus on alcohol as well as other drugs. Without that, we are only attacking a piece of the problem, and, in fact, the smaller piece of the problem.

We need to look at the entire picture. We feel strongly that any effort should clearly define EAP as the focal point of the drug-free workplace initiative. EAP works.

In any effort on alcohol and other drugs at the workplace, I think we should put our focus on small businesses. It is our understanding that most large businesses have access to EAP. Small businesses do not. They also have the bulk of our work force.

We think that you must use the language of small businesses. You must involve them in your planning along with the other various professional associations that tie small businesses together.

We strongly encourage, as Mr. Kushner said, some seed funding for the small business EAP consortia. Small businesses really cannot support the development of EAP's on their own. By using the consortia model, and with some funding from the Federal Government, we can begin to turn these problems around.

As for our consortia project, I think that this can be duplicated throughout the country.

[Ms. Saunders' statement, with attachments, may be found in the appendix.]

Chairman **Wyden**. Ms. Saunders, thank you. That is very helpful. Why don't we now go to your associate, Mr. Pond, representing Maryland. Mr. Pond, we will make your prepared remarks a part of the record as well.

If you could summarize your key concerns.

TESTIMONY OF FLOYD POND, EXECUTIVE DIRECTOR, GOVERNOR'S DRUG AND ALCOHOL ABUSE COMMISSION, STATE OF MARYLAND, ACCOMPANIED BY JOANN LEVY, COMMISSION'S DRUG-FREE WORKPLACE COORDINATOR AND JOSEPH DEEGAN, BALTIMORE GAS AND ELECTRIC CO.

Mr. **Pond**. Thank you, Mr. Chairman, committee members.

I am a native of upstate New York. Governor Schaefer and I appreciate this opportunity to address the extremely important matter of drugs in the workplace, and especially how it affects the small business community.

With me today is Ms. Joann Levy, the Commission's Drug-Free Workplace Coordinator, and Mr. Joseph Deegan, who is on loan to the Commission from the Baltimore Gas and Electric Co.

Concerned that the State of Maryland was experiencing a growth in physical and economic destruction caused by drug and alcohol abuse in the workplace, Governor William Donald Schaefer, in September 1987, established the Drugs in the Workplace Committee.

The committee, which was comprised of concerned citizens, medical, legal, and law enforcement fields, was requested to devise strategy to "include each and every employer in the State to develop, articulate, and implement a drug abuse policy."

In developing the initiative, to assist businesses in establishing drug-free workplaces, the committee set forth the following objectives:

One, develop the technical assistance and resource materials that Maryland employers would need to get started;

Two, inform the business community that the technical assistance and resource materials were available and advise them how to get them;

Three, provide training and conferences for the business community on developing drug-free workplace programs;

Four, design and implement a marketing strategy to ensure ongoing visibility and accessibility of and for the initiative.

To implement the initiative, numerous tasks were established, with some of the more notable being:

The University of Maryland was asked to conduct a mail and telephone survey of a fixed number of Maryland businesses to better assess the overall drug and alcohol abuse problems within the State;

An employer guidebook on developing a drug-free workplace was published;

A volunteer consultant resource network comprised of addiction specialists, employee assistance program consultants, attorneys, police officials, and businessmen was established to provide technical assistance, both onsite and in seminar or conference settings;

A kickoff event, "Campaign for a Drug-Free Workplace," for the media and citizens of Maryland was held on July 10, 1990, in which Governor Schaefer challenges the business community to create drug-free workplace programs;

The Maryland Chamber of Commerce held a special program on September 10, 1991, "Maryland Business Supports a Drug-Free Workplace," that attracted 1,000 companies.

Three components, technical assistance, educational opportunities, and promotion, are the cornerstone of Maryland's Drugs in the Workplace Program.

Currently, the consultant resource network has a voluntary staff of approximately 65 professionals. These individuals receive annual training and updating of the Commission's efforts. They furnish onsite technical assistance to businesses developing a drug-free workplace policy by providing data regarding drug testing, employee assistance programs, DOT and/or DOD requirements, et cetera. They also provide education and training to large groups of people in seminars held throughout the State.

In addition to the CRN, educational and training seminars/workshops are sponsored/cosponsored by various county chambers of commerce, the Maryland Chamber of Commerce, the Maryland Small Business Development Center, Maryland State Police, and various county police departments, local colleges, and large, private corporations.

Promotion of the Drugs in the Workplace Initiative is accomplished, aside from the numerous seminars held throughout the year, through various media, printed materials, a video, "Working Toward a Drug-Free Maryland," and Infoline—a talking yellow page number.

During 1990, the Governor's Drug-Free Workplace Initiative has provided onsite technical assistance to 71 companies, 5,742 employees in 18 counties; sponsored/cosponsored 13 seminars in seven counties reaching a total of 1,962 companies; presented to six professional groups reaching 765 people; and held five training sessions reaching 179 people.

For 1991, the plans for the Drugs in the Workplace Initiative are just as omnibus. For example, in addition to continuing technical assistance and seminars, a Middle Atlantic States Conference is being planned, as well as the development and implementation of regional training sessions for local law enforcement personnel with respect to their role in drugs in the workplace.

Plans to increase the utilization and implementation on drug-free workplaces by the minority business community are under way, and a recognition ceremony for those companies who have pledged to establish a drug-free workplace will be held.

The Governor's Drug and Alcohol Abuse Commission is scheduled to, in March of this year, begin tracking the progress of all companies who have utilized the initiative. There will also be telephone spot checking by staff to determine how companies have become aware of the initiative, and consideration is being given for a resurvey by the University of Maryland to further evaluate the progress of the Drugs in the Workplace Initiative.

Computer software has been designed to allow us to track the progress of companies who have utilized the resources of the Governor's Drug-Free Workplace Initiative. One year after an onsite consultation, or attendance at a seminar, companies receive a questionnaire to complete which focuses on measurable indicators of a workplace substance abuse problem, such as absenteeism, turnover, accident rates, theft, damage, and security problems.

These, and other indicators, are used to initially assess a company's potential problem, so when the questionnaire is returned, we can determine by comparison what has changed since the company's implementation of a drug-free workplace.

In the comments raised by the chairman, we believe the Federal drug statute of addressing drugs in small businesses is ineffective. Small business is not aware of the Federal Government's concerns. The Federal Government needs to have procedures made available to small businesses.

Specifically, the Federal Government could work through the States in providing moneys for the States and assisting small businesses in developing consortia in drug testing, treatment, and treatment programs.

Again, on behalf of the Governor and myself, I wish to express our gratitude for this opportunity.

[Mr. Steinberg's statement, presented by Mr. Pond, with attachments, may be found in the appendix.]

Chairman **Wyden**. Thank you very much. That is helpful.

Mr. Green, we welcome you.

TESTIMONY OF HAROLD C. GREEN, PRESIDENT, CHAMBERLAIN CONTRACTORS, INC. LAUREL, MD

Mr. **Green**. Good morning, Mr. Chairman, and members of the subcommittee. I would like to read from my prepared remarks, as it tells an accurate story of how Chamberlain Contractors has developed our drug and alcohol policy.

Chamberlain Contractors is a paving contractor, specializing in parking lot maintenance here in the Washington market.

In the mid-1980's, Chamberlain Contractors became acutely aware of disturbing trends in employee job performance and quality control issues. Between 1983 and 1986, Chamberlain saw significant increases in both our workers' compensation rate and general liability insurance. These increases, which were in excess of 100 percent over a 3-year period, were having a negative impact on our bottom line and were the single largest annual cost increases that the company was experiencing.

In addition, the two principal owners were constantly barraged with employee-related problems dealing with personal finances and/or family matters. On any given Friday, between 2:00 and 5:00 p.m., we might have to meet with a half-dozen employees to lend money or address a family problem.

At a certain point in time, my partner and I became aware that we were playing God with people's lives, and if we decided not to help them on any given day, we could adversely impact their lives or enable the behaviors that were occurring to repeat themselves.

As a result, our business was in a state of crisis as we were not controlling our employees on their job performance, but rather were reacting to their individual circumstances without any specific direction. Our business needed help, yet we had no known direction to turn.

So, in 1986, our first suggestion to start to deal with this problem was to implement a Safety Awareness Program to help reduce the frequency of work- and vehicular-related accidents. By making all employees aware of safety in the workplace, we started to immediately see a significant decrease in the frequency of workmen's compensation claims and vehicular accidents.

Unfortunately, we still faced significant employee turmoil that started to impact the business relationship between the two principal owners.

Then, in late 1987, Chamberlain Contractors took the next step by addressing the possibility of writing a drug and alcohol policy. Because of our significant exposure in using heavy equipment and trucks that operate around the Washington-Virginia Beltway, we felt it absolutely essential to put in place a drug and alcohol policy to lower our risk for possible accidents, and to hire the highest quality employees possible for the various job positions available.

Unfortunately, there were no Federal, State, or local agencies that had any knowledge whatsoever in helping us address how to write a drug and alcohol policy or implement such a program. I personally contacted at least a half-dozen Federal agencies, including the Small Business Administration, to ask for their assistance in helping us tailor a specific program to serve our needs.

They were frank in telling me that they had no idea what I was talking about or what I needed. As a result, Chamberlain Contractors negotiated with a local consulting firm to help write a drug and alcohol policy for our company. This undertaking occurred in 1988 at a cost of between $5,000 and $10,000.

During 1988, Chamberlain had four meetings with all the employees to discuss openly the issues of drug and alcohol use in the business and how it was essential that we implement a drug and alcohol policy. We worked through the company's Human Resource Advisory Group to have them support the idea of implementing such a program.

Unfortunately, at that point, we were unaware of the fact that just because a company elects to design a drug and alcohol policy, that suddenly all the problems associated with these negative behaviors cease to exist. Rather, we quickly found out in the discussion process that those employees who had job performance problems needed a mechanism to deal effectively with those problems so that they could return to the company and be more productive.

The EAP Program was presented by our consultant to Chamberlain Contractors as the model to help improve job performance for all the employees. Since implementing our EAP Program, at a cost of approximately $7,000 per year, we have seen a marked decrease in job-related injuries and accidents, increases in quality workmanship, lower absenteeism and tardiness, and a significant decrease in our insurance costs on the magnitude of $50,000 per year. These are some of the benefits Chamberlain has realized by taking the necessary time and effort to develop an EAP Program.

What is incredible about this program is that the employees support it completely. I offer, as evidence to the subcommittee, copies of our Policy and Procedures Manual and the Drug & Alcohol Policy, which show how we have integrated these policies into the daily operations of our company.

Today, we no longer face crises in human resource management issues. Today, we manage job performance and plan for the future needs of our business.

Those employees who have faced the fact that drugs and alcohol have impacted their job performance have had to make the difficult decision of whether they wish to address those problems in their life and find solutions or be terminated. In 90 percent of the instances, the employee has dealt with his or her cocaine, alcohol, or financial problem to become a healthy citizen in the community and a valuable employee here at Chamberlain Contractors.

I want to make aware to the subcommittee how important it is for the principal owners of a business to support an EAP Program. If the owners are not 100 percent behind the implementation and management of the program, it will not be successful. If management elects to make exceptions to the rule, it will not be successful. If management expects immediate results from the implementation of the program, it will not be successful.

This is a long-term program that will benefit both employees and employers and provide a competitive advantage to those businesses who implement such a program.

I have determined that in hard dollars, Chamberlain Contractors probably saves in excess of $60,000 per year plus immeasurable additional dollars from customer satisfaction, quality workmanship, and the lack of "go backs" on jobs already completed. The cost to implement such a program on an annual basis for my firm is between $7,000 and $9,000, and I believe that those are extremely cheap dollars to have such a positive impact on my employees and customers.

I would like to add that all of these cost savings and benefits that Chamberlain has reaped would not have been possible had Congress not enacted the Drug-Free Workplace Act and required Department of Transportation drug testing. This legislation allowed Chamberlain Contractors the muscle to implement a comprehensive drug and alcohol policy and administer a program to help those people who needed help.

I hope that this subcommittee will look carefully at ways to encourage businesses to consider implementing an EAP Program. By doing so, not only will the employer be helping his employees become more productive citizens in the community, but they will tend to stay employed with a company for a longer period of time.

I hope Congress, and this subcommittee in particular, will support the efforts of nonprofit organizations like CADA, the Corporation Against Drug Abuse, whose sole purpose is to get the word out to small business owners to educate them as to how they can have a healthier, stronger, and more profitable business.

I want to thank you, Mr. Chairman, and the members of the subcommittee, for allowing me an opportunity to express my views. I know this issue has transformed my business from just a run-of-the-mill paving contractor in the Washington market to a paving contractor who sets the performance standard for the industry in the Washington market.

Thank you.

[Mr. Green's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. We thank you for a very helpful presentation.

I want to recognize my colleague. Let's begin with Congresswoman Meyers.

Mrs. MEYERS. Thank you, Mr. Chairman.

First, I would like to say how much I admire all of you for your good testimony, particularly the employers who have spoken, because, obviously, of your intense concern there that led you to go that extra mile. I think that is very admirable.

Let me begin with some specific questions, and then maybe a general one, and I will try to be fairly brief, Ron.

Mr. Goche, I would like to have you for an employer if I ever leave this job and seek "real work" again. You said you were having difficulty getting the problem organized, that the language for the EAP Program was on your desk, and it had gone back and forth several times.

What language are you speaking of?

Mr. GOCHE. I am talking about the information that will go in the employee personnel packet that explains to the employees what happens with the program. Also, the supervisor's information sheets. The way we are doing it is difficult—we are in a real legal tangle. It has to be worded proper, legally, and when we have accomplished that, the EAP may or may not agree with the terminology, so we keep running around in circles getting the pieces put together properly.

Mrs. MEYERS. What are the legalities involved?

Mr. GOCHE. Basically, in how the program works. I am not sure I can answer that properly. We have it worded so we are not trapping ourselves as an employer, and we don't trap ourselves into a corner. That is where, I think, if the Federal program could develop some packet policies, such as here is policy A, or packet A, or packet B, because as small business owners, we don't know where to start.

Mrs. MEYERS. You were concerned—when you say trap yourself in a corner—about law suits by the employee?

Mr. GOCHE. Exactly.

Mrs. MEYERS. Because you, by beginning a program, seem to establish some kind of responsibility?

Mr. GOCHE. Invasion of privacy, I think, is one of the concerns. A false positive test, things like that.

Mrs. **Meyers**. Did you seek any help from groups at all, such as Alcoholics Anonymous?

Mr. **Goche**. Yes; I have a very close friend that failed most of the rehabilitation programs about five times before he came around. He helped me quite a bit by just going to some AA meetings to understand what happens in those sessions. Beyond that, the only real help we had was from the Oregon Small Business Council in their packet of information. That got us started.

Mrs. **Meyers**. You seem to have some real concern about drug testing and the possibility that if the small employers in Oregon start testing, potential employees would be driven away. There has been, at least at some point in the past, the feeling among many people who work with substance abuse, that you have to force that individual into taking responsibility for his own actions. Sometimes, this is expressed in different ways, but a kind of compassionate toughness, where you force them to confront what is wrong with them, and sometimes, testing helps with that.

Would you comment on your seeming reluctance to use testing, or did I misunderstand?

Mr. **Goche**. I am a little nervous to start testing, because I want to make sure we have everything in exact positions so that we are protected legally. Maybe part of the explanation is the way I feel about our employees. I want to be very fair with them. I want to be very honest.

I work on what I call the 70–30. I will meet you 70 percent of the way if you come 30 percent, and we have a deal. We considered random testing, and very seriously talked about it, but decided not to go into random testing when we do have it in place, because primarily of employee morale and the fact "I don't trust you" approach. We are nervous about testing.

Prehire testing is not a concern at all. If they are positive, we just don't hire them. Positive tests on the floor for cause or for a workmen's compensation claim is when I start to get nervous. That is where it all comes to a head.

Now, it is a program going to work.

Mrs. **Meyers**. Mr. Kushner, I was interested in your testimony, and I thought you gave us a great deal to think about. I was particularly interested in your comments on the cooperation at the Federal level between the various agencies and the turf battles that take place, which I think often take place. I know that the agencies in Kansas, while I think they are working together well now, at one time were having the same kind of turf battle until a consultant who had worked in alcoholism all of his life said, for heaven's sakes, there's enough drunks to go around.

In making this statement, he was urging them to try their various approaches, but to cooperate. Lack of cooperation can be very, very destructive to a program.

Can you comment on what evidence or examples you've seen of this kind of turf fighting at the Federal level?

Mr. **Kushner**. Congresswoman Meyers, I think the fact that we have no evidence of progress is a conclusion that there is a lack of working together. If you call the Small Business Administration and ask them today what they are doing about this problem, basically they will shove you off to one of the other Federal agencies. The Department of Labor would do the same thing.

I understand from talking to some of the employees within the Federal Government that this is going on. Now, regarding the cooperation, we have had similar problems in Oregon until about 1985, when the Legislature said all of these agencies are going to start working together. There is going to be one lead agency, and there is going to be an advisory council, and you, each agency, are all responsible to have a liaison person.

I guess what I am saying, is that the Congress needs to say that this is important, and you better get together, or the President says, as our Governor did, it will happen. I would encourage you to do that.

Mrs. **Meyers**. With regard to the Small Business Employee Assistance Program Initiative that your office proposed in October 1990, do you have any figures on what this program will cost, particularly the 10 demonstration projects, and is the State of Oregon funding this?

Have they received some Federal assistance? How is it being funded?

Mr. **Kushner**. Congresswoman Meyers, we are spending approximately $250,000 over a 2-year period on this program. We expect to fund 10 local projects of about $20,000 each as seed money, and that may go to a chamber of commerce to hire a part-time person to bring the members of the chamber together, to put policy in place, and we expect within a 6-month period that once those businesses come together, they will then, on a per-capita basis, put enough money in to keep it going on a long-term basis; that they will have developed the critical mass of employees that is necessary to efficiently run an EAP consortium.

Mrs. **Meyers**. What is that critical mass? How many?

Mr. **Kushner**. Well, I don't have an answer to that. It is not necessarily the number of employees, as much as it may be the types and the size of the businesses that will participate. If we can find one large business in a community to anchor it and bring in several smaller agencies, we think we can do it that way.

If we don't do it that way, we will have to have many, many more smaller businesses that will come in. It depends on the local situation. I don't think there is one particular formula that will work for every community.

Mrs. **Meyers**. OK. One last question, Mr. Chairman, and then I will let others have their turn. I have a lot of questions, and we could probably stay here all day, but I have colleagues to think of.

I would like each of you to comment on whether this should be a Federal or a State responsibility, or a combination of State and individual responsibility. How do you feel this should be funded? Maybe we could start with you, Mr. Pond.

Mr. **Pond**. I think the whole principle behind a national strategy is shared responsibility between the State, Federal, and local counterparts. We talk about private sector of small businesses. We are talking about communities. I think we, in Maryland, have seen that as our responsibility in the absence of any support at the Federal level.

I think, as the chairman and other members of this panel indicated, the Federal responsibility is clearly there. I think the lead agency issue is one we all have addressed in terms of our overall analysis.

I think you should be focusing that responsibility on some counterpart within the Federal bureaucracy, so you could focus, and we could focus our efforts on that particular agency.

I think the partnership we can bring between the Federal and State government, and ultimately pass those resources down to small businesses, could occur to the Small Business Administration through some pilot grant programs. I think it will sell itself right off the start.

I think the gentleman's reference to the community program is a perfect example.

Mrs. **Meyers**. I would like to hear from you, Ms. Saunders. I noticed that Mr. Kushner, I think, said that funding for these programs is as little as $100,000 per State, but I noticed that New York's program alone was $5 million, so——

Ms. **Saunders**. No; $500,000. It was a small program.

Mrs. **Meyers**. I read wrong.

Ms. **Saunders**. I wish it was $5 million. It is $500,000. It is a small effort. I feel strongly that there is a need for combined effort at the State and Federal level. I think the States have gone forward, but we need additional funds to be put into the States in order to continue the programs.

Particularly in New York State, where we are facing very difficult times financially, it would be extremely helpful for us. We have only reached 300,000 businesses, a very small number of businesses.

There is still a great deal of need. We would like very much to have that cooperation and cross-fertilization with the Federal Government.

Mr. **Kushner**. Congresswoman Meyers, I would agree with Mr. Pond. It needs to be a full partnership between the Federal Government and State government, but I also think what we will find is small businesses are very willing to help if we can give them some direction, and that includes dollars. They are not unwilling to put dollars in. They just need the help and direction on how to do it.

I think this is an area where a relatively small amount of money can do a really significant and great amount of good. I just want to make one other comment, that is, we really concentrated on the businesses themselves. The data would indicate that when a business develops a drug-free workplace policy, it not only impacts the employees of that business, but it impacts the whole community, particularly the young people in that community and those getting ready to come into the work force.

If the businesses in their community are not going to employ them if they have a drug abuse problem, and there is a policy in place, it will have significant impact on them. It is critical not just for the business, but the entire community that we do this.

Mr. **Goche**. In response to your earlier comment about working at our company, I do have a job application with me. I really think the Federal money needs to get right down into the trenches on the local levels, and when I say into the trenches, us small businessmen are a little paranoid. We don't want to get our dirty laundry out on the line. We have to get down to the local level, almost a one-on-one basis, and get into what I call under the "good old boy circuit," that yes, Joe down the street has it, it is a good deal, he told me about it.

You really have to get inside these businesses and talk to these owners one-on-one. I think that is where it happens.

Mrs. MEYERS. Mr. Green, I think you are an admirable employer, too. I really do admire the efforts that you made in getting your program started.

I think you were the one who said particularly, you had difficulty getting any response at all from the Federal Government, and I would like to hear your comments on whether you think this should be a Federal, State, or local effort.

Mr. GREEN. I have no real strong preference either way. If I had to make a general indication, I would say probably toward the State level, but my comment would be more that it is really a win-win situation for both business and Government by implementing such a program in the fact that business wins by lowering insurance costs and increasing their job performance for their employees.

Suddenly, you are measuring job performance and it is a lot easier to manage your business. It is a win-win situation for Government. I don't care if it is the Federal or State level. I don't understand why it has not gotten more attention than it has, because it is cheap dollars, and it has a significant return to the bottom line, and that is the benefit.

Mrs. MEYERS. You were able to get literature, I presume, reading material from the Federal Government—you didn't get anything?

Mr. GREEN. The only thing I ever saw was the Drug-Free Workplace Act. I was very fortunate that a gentleman who had done some of the writing for that, Mr. Paul Pernell, was the consultant I used who helped us design a very detailed drug and alcohol policy for us.

From that, over a period of 4½ years to implement our EAP and see how beneficial it has been for my company. It literally received no documentation from any Federal, State, or local jurisdiction.

Mrs. MEYERS. I thank you all very much. I was very interested in your testimony.

Chairman WYDEN. I thank my colleague.

The gentleman from New York.

Mr. SERRANO. Thank you, Mr. Chairman.

It is obvious from the questioning by the gentlewoman and obvious from the literature provided by the chairman, that we will all focus in on how the Federal Government can best assist in this particular problem.

What I would like to do with my couple of brief questions is to try to educate myself on the problem itself. I would like to ask Ms. Saunders and Ms. Kushner is there a pattern of different types of substance abuse in different businesses?

In other words, in different communities in this country, there are different patterns of substance abuse. The people who are on the street corners of my district are doing a certain kind of drug and the people who are in the Wall Street boardrooms are doing another kind of drug.

Is this also seen in the small business community? In one type of business, if you will, does one type of drug abuse prevail over another drug? In a small plant or more labor-type situation, might you have a particular kind of drug abuse?

Ms. SAUNDERS. I think demographics will make a difference. But generally, the person on the street corner is not working, so, therefore, would not be caught in the EAP network. But we have found, even in inner city situations, it is the working person who more than likely will be involved with alcohol, as opposed to severe drug problems.

There may be some combined drug use, but there is an alcohol component to it. Again, if you move upstate, you would get probably more of the alcohol and less other drugs. Based on the demographics, there could be some differences and an appropriate EAP would respond to the need.

Mr. SERRANO. It is mostly an alcohol problem in most of these cases?

Ms. SAUNDERS. Not necessarily. I am saying it depends on the situation. There are a lot of demographics to be taken into consideration. If you are dealing with young male population between the ages of 20 and 35, you will probably get a combination of drugs and alcohol.

If you were dealing with women, you would probably get some less. If you were dealing with over-35, you might have more alcohol. It depends on the particular demographics of the area we are responding to.

Mr. KUSHNER. Congressman Serrano, in my testimony, I include a study done by Cook and Harold of the Institution for Social Analysis in Washington, DC. It is a subset of a Gallup poll of 1,716 working adults, and basically a national household sample, and it was on illicit drugs.

I agree with Marguerite, we need to look at alcohol certainly as much as we do other drugs. But what we found is the 18 to 34 age group had the most significant amount of drug use, and they found 24 percent of males and 14 percent of females had used marijuana in the past month; 5 percent of males and 2 percent of females had used cocaine in the past month, and their results confirmed drug use rates differ greatly according to sex, education, job category, and age.

Current use is more prevalent among skilled trade workers, sales personnel. Of course, this study elaborates and might give you additional answers to your question.

Mr. SERRANO. So, there are patterns we can look to. How would that affect the work life of the individual? You see, I am phrasing these questions based on 16 years in the State Assembly, 1 year here—or less than 1 year here, and lifelong experience of knowing that there are people in the South Bronx, of course, whose drug abuse has them on street corners with nothing to look forward to, and there are others whose drug abuse allows them to go to the factory, and others whose drug abuse allows them to go to Wall Street.

The one that goes to the factory, in many cases, is using the kind of drug that will impair his ability to last 5 years in the factory. I am not making a comment about one drug being any better than another. There is no such thing.

Is there any research that might address the correlation between substance abuse and length of work-life?

Ms. SAUNDERS. I am not exactly sure what you are asking. What I think—in the issue of a drug-involved person who is working in the factory, if that person had access to an EAP, the ability to intervene with that person earlier and direct that person to the appropriate level of care could result in that person not ending up on the street corner. They reach the street corner because they have not been intervened at an early enough period to make a difference in the person's life.

I can check and see if there are actual surveys. Nothing comes to mind immediately, but I will check.

Mr. SERRANO. One further question, staying with this whole issue of how different parts of the society look at different problems, are you satisfied, all of you, that we are making some progress in this country into having this society understand that alcohol is as bad as any other drug, or is the fact that we have alcohol lobbyists, and we don't have cocaine lobbyists, still a major problem?

Ms. SAUNDERS. From where I sit, it is still a major problem. I don't think it is commonly accepted for the major problem that it is.

Mr. POND. I would agree with that. In fact, I think that the one extreme liability of the ONDCP approach is directed toward drugs. There was an excellent report that came out on the Commission for Drug-Free Schools that laid out those very thoroughly.

I think alcohol is still the primary drug of choice and a problem. It is overshadowed in urban areas in terms of violence, but it is still there.

Mr. SERRANO. I am just about finished, Mr. Chairman.

One of the things that certainly I would like to spend time on, for as many years as I am here, is to get our society to understand that this is a major, major problem. When you take an area like South Bronx, the poorest district in the Nation, the guys on the corner are addicted to all the horrible things we know about. Some of them are in such bad shape, they hurt themselves more than anyone else.

The guy working who drinks and beats his spouse or his children, or the woman who drinks and neglects both of them and is absent 2 out of every 7 days, either from the home or the workplace, is really such a major problem. In a horrible way that I hate to admit, the one on the corner is almost not counted in terms of being a member of the community. The other ones are, but are not participating at all.

So, I would just hope that we could continue to work on this particular issue.

One last point, Mr. Kushner, I think your comment was really so well-taken. Part of the solution to this problem is to send a message to all of our younger people, that if you enter a particular part of the work force, alcohol and drug abuse is not allowed, and if you have any thoughts of getting a job there, you better shape up.

I think what is wrong with our society right now is that from your best football player to your greatest movie star, to the politician or whatever, the belief is that somehow you can go in with a substance abuse problem and still survive and be successful in that environment.

I think your point is a very strong one. Thank you, Mr. Chairman.

Chairman Wyden. I thank my colleagues. Both Congresswoman Meyers and the gentleman from New York, I think have been very helpful. Let me see if I can ask a couple of others of this panel.

I think one of the most important concerns that I have at this point is that all the evidence suggests to me that this problem is going to grow in small businesses. It is not going to shrink and dwindle away, but, in effect, the trends are that large businesses are going to have—fairly soon, or they are moving in this direction—crackerjack programs to eliminate substance abuse, starting with prehire testing and going all the way through serious employee assistance programs.

My sense is that what is going to happen is that substance abusers are going into these jobs interviews at large businesses. They are going to find out that drug testing is going to be part of the process, and one or two things are going to happen.

They are either going to take a test and get eliminated, or they are going to walk out the door and head to a small business. The evidence does seem to indicate these people are still going to look for work, and they are probably going to find it at a small business, where there are no real substance abuse programs for the reasons you cited.

Would all of you agree with that? Mr. Pond.

Mr. Pond. Yes.

Ms. Saunders. I agree.

Mr. Kushner. No question.

Mr. Goche. 100 percent.

Mr. Green. Agree.

Chairman Wyden. In terms of the Federal Government's response, I very much share the view of my colleagues. I think Congresswoman Meyers made this point, nobody is talking about federalizing a solution to this. What I envision would be the Federal Government trying to be a better partner with the States.

The problem we face, of course, is your assessment of the Federal Government's efforts to date. Why don't I let you grade, for example, the Small Business Administration? If you were giving the SBA a grade on the A through F scale, what would you give them, Mr. Kushner?

Might you give them an incomplete?

Mr. Kushner. Well, again, Congressman Wyden, I have my understanding from the people I have talked to who have asked for help, is that there is no help there. They basically push you off to another agency, and, really, the only group that is doing anything that I am aware of is the NIDA workplace office.

Even there, I think the strategies have not been adequate and have not been the right strategies. So, I don't want to go around giving grades. I may need a Small Business Administration loan at some point in time. It has not been too good.

Chairman WYDEN. Other comments with respect to the Federal role? Mr. Green, I guess you said, and it doesn't get more critical than this, "I personally contacted at least a half-dozen agencies, including the Small Business Administration, asked for their assistance in helping us tailor a specific program and to service our needs. They were frank in telling me they had no idea what I was talking about."

Mr. GREEN. I was a Small Business Administration participant; got a small business loan back in the 1970's. That was a natural tendency for me to turn to them. It was a very short conversation and to the point. They didn't know what I was talking about. They didn't wish to investigate any further for me.

I did not have a lot of positive things to say about the SBA.

Chairman WYDEN. I gather from you, Mr. Goche, that you were in a situation where your business, in the time that you cited, the critical time was literally closing down, and people at the Federal level were unable to give you any counsel about where to go, is that correct?

Mr. GOCHE. Our business wasn't closing down, but we were having production problems, and we were going to have severe problems if we didn't get it changed.

As far as Federal help, Federal assistance, I never talked to anybody in the Federal bureaus, because I didn't know where to start. I didn't have a clue. We did it all with local associations or the State help through the Oregon Small Business Council.

Chairman WYDEN. Are there any other comments on the Federal response?

Mr. POND. I don't think SBA gets a grade at all. I think they dropped out. I think Jeff sort of alluded to it when they described their 12 focus goals need a little bit more focus and directed vision in terms of approaching this population we are talking about here.

I think they have been in it, but the appropriateness of their response is severely lacking.

Mr. KUSHNER. Congressman, let me give you one example. One of the strategies of the NIDA workplace office was to pick out 10 States and have those 10 States do conferences for small businesses in that State, which on the surface sounds like a good strategy.

However, what has happened is they have put on 2½-day conferences in these 10 States, and Oregon wasn't one of them, because I didn't believe this was going to work. Basically, those who show up are employee assistance providers, treatment providers, laboratory providers, and a few business people representing larger businesses.

A small business person like Mr. Goche or Mr. Green cannot take 2½ days away from their workplace to attend a conference. We have to go and meet with them on a one-to-one basis, or we have to structure a set of 1- or 2-hour lunches with them to inform them of what they need to do and give them their help.

We cannot put a 2½-day conference together and expect small business people in this country to come to it. With 4 or 5 employees or 20 employees, these owners cannot take the time to do that.

Chairman WYDEN. With respect to some of the other Federal agencies, I note that Mr. Kushner says that when he contacted the Drug Czar's National Drug Control Policy Office for help with small businesses, they said, and I quote, "Although we have been able to respond to the most global and generic needs, we have clearly been unable to address many specialized areas of interest such as yours."

Now, it doesn't seem to me that small businesses, like those in our State where 95 percent of the jobs are at small businesses, is something so specialized that it should escape the interest of the Drug Czar's Office. Do you all share that view, or did you have different experiences?

Ms. SAUNDERS. My experience with the Drug Czar was not around small businesses, but around alcohol. I was also told that was not an area of their concern, and I should go talk to prevention people and so forth. Absolutely no response.

Mr. POND. I think what we need, Mr. Chairman, is you help them focus a little bit. I think, obviously, the small businesses are an overwhelming number of employers, and we work at the workplace as prevention work site. That is where we educate the parents who are employees. That is where we have rehabilitation.

There is a combination of all of our enforcement prevention and rehabilitation strategies rolled in the workplace. That should be clearly defined. That is the local and obvious focus of a lot of our activities.

Chairman WYDEN. I don't have many other questions. I just want to touch on two other points. I think we would like to hold the record open. Congresswoman Meyers made an important point about your suggestions for these employee assistance programs. That would be one area.

Again, it seems to me a baby effort by the Federal Government, some useful material to get out to the small businesses of this country, and I think we would like to have your suggestions and ideas for that. We will hold the record open.

Let me recognize my colleague, if she would like to add anything further.

Mrs. MEYERS. Thank you, Mr. Chairman.

One thing I did not get the opportunity to ask about—and certainly our witnesses may have some aspect as far as specific ideas regarding different types of Federal assistance—but maybe we could ask for our people here today to comment on what role the Federal Government could play using tax incentives, that sort of thing, to try to get employers to participate. Obviously, that can get to be a very, very costly proposal.

However, I would think there would be some kind of a modest way it could be approached. Second, I would like to hear from Mr. Goche and Mr. Green, but maybe they can submit it for the record, as to what kinds of provisions are in your employee health plans for alcohol and drug abuse.

Obviously, this is something that is controlled at the State level rather than at the Federal, but I would like to hear what your suggestions would be as to how that can be improved.

Chairman WYDEN. The gentlewoman would like that further in writing for the record, as well, or for now? Either way is fine.

Mr. **Green**. I would make the comment that, one, we provide health care for all of our employees, and one of the things that we do through the EAP Program, when somebody is in the EAP Program, and they may be out of our employment for up to 6 months, we do continue to give them full benefits, and they also continue to get a full paycheck.

So, I think if you have an EAP Program, you must support the employees to get into the EAP Program, or else—or they are not likely to seek the help that they need, and that is very important.

Mr. **Goche**. A couple of comments: One is, we talk about the 5 percent of the work force that has the problem. The interesting thing that I have noticed in our plant, and I was just talking with our day foreman who had done plant evaluations last month, there is an underlined positive feel on the floor, morale is up.

I talked to the owner of an EAP day before yesterday, and he said it usually happens. Again, employee morale is up once an EAP system is in. We don't know as an employer who goes to the EAP. We never know.

It is totally confidential unless we specify, but it does two things, I feel. It gives the employee the confidence that help is available if they need it. If they use it or not, it is there. It is a very positive thing.

The drug testing, in my opinion, just does not work at all, except for prehire, if you do not have an EAP in place. In Oregon, with the health insurance the way I understand it, and Jeff Kushner can correct me, it is automatic that counseling is part of the health insurance program.

So, when they go to the EAP for help, drug and alcohol rehabilitation programs are available. They are evaluated on the basis of their income and also as to any other programs they may need to get into. They pay for it if it is not paid for by the company, or other agencies can help them get into some other programs that are not costly from the employees' side.

Mrs. **Meyers**. Thank you.

Chairman **Wyden**. I thank my colleague.

You all have been here a long time. Let me just make a couple of observations, and then we are going to excuse you.

On this matter of additional funding that Mr. Kushner mentioned, that is certainly something that Congress can consider, but I have to tell you that if we are spending $10 or $11 billion in the Federal war against drugs, and overlooking small business in the fashion that you have described, the very first thing that we have got to do here at the Federal level is to start spending the existing dollars more effectively.

That is the very first thing that has to be done, and I think that Congresswoman Meyers made a very good point; there needs to be some heads knocked in terms of these various agencies to get them on the same wavelength, and knock off this turf fighting, and start communicating, and put in place a real program.

It may well be, as they go forward and do that, that the suggestion that Mr. Kushner made of some kind of block grant and the idea of the small amount of funds may be appropriate. However, I must tell you from my experience that when I look at the oversight function on the Small Business Committee, when I see the existing dollars are not being spent very well—and Mr. Green, you have told us about how you called the premiere advocate for small business in this country, and they did not have any idea what you were talking about, and others of you have related similar experiences—our first job must be to get them to start incorporating the needs of small business into their program.

I want to give you one other brief observation. The President said the other night in his speech to the Congress that crime is going to be one of the top priorities over the next 100 days.

I am very supportive of the President's crime package and have been voting over the past few years for the President's crime package, and I am going to do my best, over the next 100 days, to see that we address this problem of small businesses with drugs as well, so that goes on the table with the President's crime package, which I, for one, am prepared to support.

You all have given us very helpful input. Let me see if my colleagues, Congresswoman Meyers or the gentleman from New York, have any further questions. If not, panel members, we thank you for your good work, and we will look forward to working you in the days ahead.

Chairman WYDEN. I now call to the witness table Dr. Joseph Autry, Director, Division of Applied Research, National Institute on Drug Abuse; Mr. Mark S. Hayward, Acting Chief Counsel for Advocacy, Small Business Administration; and Mr. Roland G. Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor.

Gentlemen, we welcome you to our subcommittee. You may be aware that it is the practice of this subcommittee to swear all the witnesses who come before our panel. Do any of you have any objection against being sworn?

Dr. AUTRY. No, sir.

Mr. HAYWARD. No, sir.

Mr. DROITSCH. No, sir.

[Witnesses sworn.]

Chairman WYDEN. Gentlemen, we thank you and thank you for your patience, as well. It has been a long first panel. Obviously, there are strong feelings by the members on both sides of the aisle.

We will make your prepared remarks a part of the record in their entirety, and that will allow us time for questions. Why don't we begin first with you, Mr. Hayward.

TESTIMONY OF MARK HAYWARD, ACTING CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. HAYWARD. Thank you, Mr. Chairman, and members of the subcommittee. I am pleased to share with you the views of the Office of Advocacy on the vital issue of substance abuse in the American workplace.

We, as a nation, have been increasingly exposed to the personal and human tragedy that substance abuse has wrought upon our communities, our families, and our schools, but we have also come to recognize that substance abuse translates not only into human tragedy, but lost productivity, lost jobs, lost opportunities, and a reduction in our competitive edge.

Indeed, substance abuse has been estimated to cost our Nation as much as $100 billion in lost productivity. For this reason, President Bush emphasized in his national drug control strategy, that American small business has a vital role to play in eradicating the substance abuse epidemic.

I commend you, Mr. Chairman, and the members of this subcommittee, for focusing on this vital facet of the substance abuse problem, the effect on the American work force. Substance abuse, including both illicit drug use and alcohol use, reduces America's ability to effectively compete with our foreign trading partners because it results in higher production costs and lower quality of goods.

Substance abuse in the workplace is a particular threat to the future viability of American small business. Economists at the Small Business Administration have conducted an indepth examination on the changes facing small business as we enter the next century.

Increasing productivity in the 1990's is essential to small business success, and ultimately the success of the American economy.

It is certainly true that productivity can be increased by increasing the quantity or improving the quality of capital; for example, through increased use of computers or better management techniques. However, substance abuse can eliminate these gains in productivity through the denigration of human capital.

Moreover, those employees at most risk for substance abuse are more likely to be employed by small rather than large firms. For example, small businesses employ a greater percentage of young workers than do large firms. Surveys show that, in general, marijuana and cocaine abuse are more prevalent in young workers. It is not surprising that the nearly 2,000 delegates to the 1986 White House Conference on Small Business ranked substance abuse in the workplace as one of the crucial issues facing the small business community.

Mr. Chairman, recognition of the enormous extent of substance abuse in the workplace has been an important first step. We have come far simply by focusing attention on the problem. But, we must resolve to do much more than just recognize this threat to small business. We must work together to help small business combat substance abuse, utilizing the resources and energies of the private sector and Federal, State, and local governments.

Small businesses, more often than large firms, lack the resources and information to wage successful campaigns against substance abuse. Indeed, there is a great disparity in utilization of employee assistance programs by small versus large businesses.

The 1988 Bureau of Labor Statistics' Survey revealed that, while 71 percent of the Nation's largest businesses provide employee assistance programs to their workers, only 5 percent of small businesses offer similar programs.

While EAP's may prove to be cost-effective over the long run, many small firms either are not aware of the benefits or find the up-front costs too prohibitive.

One way to lower costs of an EAP for small firms is through consortia. As Dr. Kushner has testified, Oregon is currently implementing a broad initiative to combat drugs in the small business workplace. One element of that initiative is the creation of EAP consortia. Small businesses need to be educated on the advantages of utilizing such EAP consortia.

The SBA is engaging in those educational efforts. The Department of Labor provides grants to EAP consortia which assist small businesses.

The SBA's Office of Private Sector Initiatives has recently provided those SBA district offices located near these consortia with information about the EAP. The district offices can now market these EAP's to local small businesses.

The SBA's district offices offer local small businesses information on available resources to assist the businesses with implementation of an antidrug program. One of the first, cost-free steps a small business can take is to institute a formal, written policy on drug use by employees. Yet, according to the BLS survey, most small firms have no formal policies regarding employee drug use.

Small businesses seem to be hindered by a general lack of information regarding the issue of drug abuse in the workplace. To help educate small businesses, the SBA has cosponsored seminars and workshops to provide local small businesses with information on how to implement antidrug programs and to comply with the Drug-Free Workplace Act.

For example, the local district office in Washington, DC cosponsored a workshop with the Corporation Against Drug Abuse to help small firms respond to substance abuse problems, and our Philadelphia district office cosponsored a 1-day conference to assist small business in complying with the Drug-Free Workplace Act.

The SBA also operates a toll-free answer desk which receives, on average, 300,000 calls each year from small business owners and prospective small business owners. Our answer desk will refer any caller requesting information on substance abuse to NIDA's Workplace Hotline, which can provide more detailed information.

Finally, the SBA's Office of Advocacy will continue to work with the Office of National Drug Control Policy to ensure that the serious problem of drugs in the small business workplace is adequately addressed.

In the past, the Office of Advocacy has supplied to ONDCP statistical information indicating the breakdown of firms by employment size. In addition, the Office of Advocacy has participated in discussions with ONDCP on how drug-free workplace requirements could take into account the ability of small businesses to comply with additional regulations.

Mr. Chairman, the prevalence of drugs in the workplace should be a serious concern for every small business. Small business owners must recognize that drug abusing employees are not just the problem of the business next door. It is a potential problem for every small business owner.

While the response of the business owner will depend upon the available resources to that owner, at the very least, no small business should be without a formal policy on drug use.

The goal of every antidrug abuse program should be rehabilitation of the drug-abusing employee. Small firms have often invested a great deal of time training an employee, and, if the drug-abusing employee can reform, it benefits both the worker and the employer.

Thank you for the opportunity to appear before this distinguished committee.

Mr. Chairman and members of the committee, I will be happy to answer any questions you may have.

[Mr. Hayward's statement may be found in the appendix.]

Chairman WYDEN. Thank you.

Doctor Autry.

TESTIMONY OF JOSEPH H. AUTRY III, M.D., DIRECTOR, DIVISION OF APPLIED RESEARCH, NATIONAL INSTITUTE ON DRUG ABUSE, ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dr. AUTRY. Thank you, Mr. Chairman.

I am Dr. Joseph Autry, Director, Division of Applied Research, National Institute on Drug Abuse (NIDA), Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA].

I am pleased to represent NIDA and participate in this hearing to testify on the problems of substance abuse in the workplace and NIDA's role in addressing these problems.

I will limit my comments to such areas as the scope of the problem and employers responses to drugs in the workplace, particularly with regard to the NIDA/HHS responsibility.

As you have heard, many employers are taking steps to address substance abuse problems in the workplace. This is due to two factors: First, the need to be competitive; and second, Federal leadership.

Employers have good reason to be concerned about drug use in the workplace. The 1990 NIDA National Household Survey shows that 68 percent of those reporting past month drug use were employed. It also shows that nearly 9 million employed Americans have used drugs in the past month.

In the 18- to 34-year-old population employed full time, some 24 percent have used drugs in the past year and 10.5 percent in the past month.

We have some breakdown information that indicates that the range of employee drug use varies by type of industry from a low of 11.7 percent in retail trade to a high of 21.9 percent in the construction industry. We know that the total projected cost of drug abuse for 1988 was $58.3 billion. That does not include the epidemic of crack.

Mrs. MEYERS. Dr. Autry, may I suggest that those in the room might hear better if you would get a little closer to the microphone.

Chairman WYDEN. The gentlelady's comments are very appropriate.

Dr. AUTRY. If you include alcoholism, the cost rises to $140 billion per year. These costs include direct and indirect costs. Direct costs are costs attributed to detoxification, drug treatment, medical care treatment, and psychiatric care. Indirect costs include absenteeism, poor morale, public relations problems, and reduced productivity.

There is a recent Postal Service study that shows newly hired individuals who tested positive for drugs showed an involuntary separation rate that was 47 percent higher and an absenteeism rate that was 59 percent higher than those with a negative test.

A Georgia Power Company study showed that drug users consume 2 times the medical benefits consumed, have 1½ times the absenteeism, and have 2 times the workers' compensation claims as nonusers.

The Bureau of Labor Statistic has reported that there has been a 60 percent increase in formal written policies by employers throughout the country and a 100-percent increase in EAP's.

Unfortunately, not many increases have occurred in small businesses. Many businesses, including small businesses, have had EAP Programs in place long before the emphasis on the Drug-Free Workplace Act in response to their knowledge of the impact of alcohol abuse and alcoholism on the workplace.

If you look at companies with 10 or fewer employees, only 6 percent have current formal workplace policies. The two reasons that small businesses most frequently cite for not having workplace programs in place are, one, cost barriers which you heard about today, and, two, a rather firm belief that they do not have a problem. Unfortunately, the research does not support this belief that they do not have a problem.

We are currently modifying our Helpline to get more useful statistics about those who call in—information such as size of company, geography, and type of industry. We are also currently mounting a research program through the National Laboratory Certification Program through which we can get the same types of information.

The prevention components of workplace programs are analogous to the prevention efforts that we have mounted in schools for students. We offer technical assistance to Federal, private sector, and other public sector employers in developing workplace initiatives and to help them once they have implemented programs. We expect to track the usefulness of those programs and see the cost-benefit ratios.

In addition, we have a research program that focuses on prevalence of drug use, effects of drug use in the workplace, and relative effectiveness of different workplace policies. We will be looking at those across different sizes of business.

We also have the National Laboratory Certification Program that I mentioned which has become the gold standard for drug testing in this country. We find that not only federally regulated programs, but also many private sector programs are turning to these labs in order to get the highest quality of drug testing they can. The National Laboratory Certification Program certifies laboratories to be in compliance with standards for urine drug testing of Federal employees.

We have a series of 10 regional and State workshops aimed at small- and medium-sized businesses and find there are a lot of problems in attracting the small businesses to the workshops. We are trying to modify the workshops to increase their usefulness and the small business owners receptiveness to the information contained in them.

Mr. Kushner suggested in the future we ought to take a look at drug-free workplace policies and come up with policies that are very specific for small business.

In 1990, we completed a study of drug-free workplace policies nationwide by organizations according to size and other factors. In the coming year, we will complete our analysis of generic issues and options open to employers and will put out publications and information aimed at different size businesses as models to help them establish drug-free workplace policies.

We will be working with civic organizations such as chambers of commerce and Kiwanis, among others, as well as our colleagues in Government, in these efforts.

We will be involved with big consortia and multibusiness collaborations to find the most effective way of buying EAP and drug-testing services.

You have heard about our Helpline which has about 25 publications that are sent out to people asking for information on setting up drug-free workplace programs. I have brought just a few of the examples of what we have available, including drug-free workplace program booklets, "Strategic Planning for Workplace Drug Abuse Programs," "A Model Plan for Comprehensive Drug-Free Workplace Programs," and "Guidelines for the Development and Assessment of a Comprehensive Federal Employee Assistance Program."

The Helpline responds to over 1,000 calls per month. Most of the calls are from businesses with 500 or less employees, and the bulk of these are from businesses with 250 or less employees. We also distribute materials through the National Clearinghouse for Alcohol and Drug Information [NCADI], such as a series of four video tapes on drugs in the workplace, a model plan for drug-free workplace programs, and guidelines for EAP's.

As new publications are brought on line, they are sent to State alcohol and drug abuse directors. In 1992, we will be doing an evaluation of the effectiveness of assistance provided through the Helpline in order to design more effective programs.

One word about the Drug-Free Workplace Act; originally it was intended to deal with people who had Federal contracts and grants. What we are finding is that the private sector is responding more broadly, and many others are asking for information about how to implement programs.

Let me just close by saying that it is clear that drug abuse is a problem in our Nation's work force. This has an obvious direct and indirect consequences to the workplace and the well-being of all Americans.

American citizens are paying for the added cost of employee drug abuse through lost productivity, and diminished ability to compete in the world marketplace.

For smaller businesses with fewer resources, these added costs can determine their future success or failure. The need to provide support, including technical assistance, materials, and training to small businesses is an important part of NIDA's mission to prevent and stop drug abuse in our Nation.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions.

[Mr. Autry's statement may be found in the appendix.]

Chairman **Wyden**. Thank you.

Mr. Droitsch.

TESTIMONY OF ROLAND G. DROITSCH, DEPUTY ASSISTANT SECRETARY OF LABOR FOR POLICY, U.S. DEPARTMENT OF LABOR

Mr. **Droitsch**. Thank you, Mr. Chairman.

At the Department of Labor, we define substance abuse to include alcohol and also the legal or illegal abuse of prescription drugs, as well as illegal drugs. We feel you need to address the problem in a holistic way or it makes no sense. So, when I talk about substance abuse, it involves all three of those elements.

I believe that there is very broad agreement that the war on drugs cannot be won effectively without addressing the demand side. There is no controversy about that statement.

If you look institutionally at where you can address that problem, there are really only four places. You can address it in the home. You can address it in schools. You can address it at an amorphous area called the community, or you can address it in the workplace.

If you look at each of these settings with some care, I think you will find out and agree that the workplace offers some very unique and very powerful characteristics for dealing with this problem.

Starting out with the just-released National Drug Control Strategy, on page 70 there is a very telling chart on the status of drug users based on the NIDA survey. It is a pie chart. It shows the employment status of drug users. It shows 68 percent were employed. This is a great slice of the pie chart. That used to be 70 percent. That number dropped down to 68 percent.

Ten percent are unemployed, and some of those people are just temporarily out of the labor market, 12 percent are students, and 10 percent are either homemakers or fall into miscellaneous categories.

Basically, that pie chart tells us that the problem is located very heavily in the workplace. It is very clear that if we are to effectively address the demand side of the substance abuse problem, the workplace is absolutely key.

We have heard a lot on the impact of substance abuse on the workplace. I don't want to repeat earlier discussions, but we know the impact is very large, billions and billions of dollars, whether it is $100 billion or whatever it is, it is very substantial.

I think there is no question about the impact in terms of the size. The preciseness is very murky but the amount is enormous.

We have heard a lot today about exactly what substance abuse does to the workplace. The Department of Labor is particularly concerned about the health and safety aspects since we are the agency responsible for the Occupational Health and Safety Administration. We are concerned because of health care costs and workers' compensation which are also programs that the Department of Labor is deeply involved with.

Obviously, with rising health care costs, the issue of collective bargaining and wages has been preeminent in terms of a lot of labor settlements.

We are also very concerned about the productivity factor.

Finally, the Department of Labor is very concerned in terms of the impact in employment and training programs. It is very clear that substance abuse and a quality work force are simply totally incompatible.

What is interesting for the committee to note is that back in 1986 when the Department of Labor first got some funding in the area of substance abuse, we did not know what to do with it. Who in the Department should receive this money? How should we begin to organize our efforts?

I think that is a very telling point because, up until fairly recently, I believe there was major denial that this is a workplace problem. The fact was that the Labor Department did not understand substance abuse as a workplace problem. We have subsequently become greatly educated in this area.

I think this parallels quite closely what we have heard this morning from the panel before us. Basically, what you see is an awakening giant, an understanding that the workplace is an area where substance abuse must be addressed. I think this is a very positive and optimistic aspect of what is happening today.

When it comes to the impact on small business, we need to have a definition. The Small Business Administration generally uses 500 or fewer employees as the definition for small businesses. The Department of Labor, using BLS survey data, has chosen 250 as the cutoff point. If you take a look at that cutoff point, basically, you have in the 5.8 million establishments in the country that have employees, 99.3 percent of those have fewer than 250 employees. Clearly, that is an awesome percentage.

In terms of the work force, small employers represent approximately 60 million workers which is about two-thirds of all employees. So, we are really dealing with a very, very significant portion of the work force when we say small business.

Small Business is often thought of as a kind of fringe issue, but it is very much front and center.

The Department of Labor for that reason has targeted this area on which to focus its substance abuse activities. The reason why we have done this is, as you have heard, that larger institutions have been able to establish substance abuse programs. It is the smaller businesses, clearly, that have had the difficulty.

When it comes to what we believe a company must do, this is an area that is actually quite intriguing for Washington. We actually think we do know what has to be done. With many of the Department of Labor's programs, we are often scratching our heads as to exactly what can we do to solve this or that problem, say, for example, the problem of youth unemployment.

In the area of substance abuse, however, we feel very confident that we do know that, basically, every workplace should adopt, to the fullest extent possible, a comprehensive substance abuse program.

We heard about such programs this morning. Basically, this involves a five-point program: First, a clear-written policy statement; second, training for employees as to the dangers of substance abuse; third, training for supervisors as to how to deal with the problem of substance abuse; fourth, an EAP Program or access to one; and, finally, fifth, drug testing as appropriate.

The reason why we feel so confident about that is that the larger companies that have adopted these programs seem to have successfully dealt with the problem substance abuse.

There is, of course, a need for further evidence to look at the effectiveness of such programs. The Department of Labor will be addressing that. But, basically, we feel confident because a lot of this approach has evolved from dealing with the problem of alcohol in the workplace.

When it comes to what should the Department of Labor be doing and is doing, essentially, we have focused on three different areas. One is providing information to employees and employers as to how to implement such a five-point comprehensive program. This, for example, involves several booklets.

We also have two videos in progress. We are exploring better ways to disseminate information electronically. An improved information campaign is needed, as we heard around the table this morning. We are using OSHA, MSHA, and ESA to deliver information.

We are administering an EAP Grant Program to promote EAP consortia for small businesses. We think this is an interesting program, and we are interested in studying the effectiveness of this approach.

Finally, we are doing continual research.

In closing, I would like to say that I think there is reason to be optimistic. We are awakening. We are beginning to understand the problem, and we need to proceed.

Thank you, Mr. Chairman.

[Mr. Droitsch's statement may be found in the appendix.]

Chairman WYDEN. Thank you very much, Mr. Droitsch.

Gentlemen, I have to tell you that I am a little bit mystified by what I have heard so far. Because, if one were to take your testimony, particularly yours, Mr. Hayward and yours, Dr. Autry, at face value, things are pretty hunky-dory out there. You are all just plugging away in a very effective fashion and small businesses are getting served.

You were all here for the earlier witnesses. I don't think they could have been more explicit in saying that what is being done today by the Federal Government did not serve them effectively.

Mr. Hayward, Mr. Green said that when he called the Small Business Administration, he was told specifically that nobody there had any idea about what to do to help him. Mr. Kushner talked about the practice, confirmed by the subcommittee's investigation, which was that when people do call SBA for assistance, they are simply referred to other agencies.

The witnesses were all unanimous in saying that the SBA was not being an effective advocate for small businesses facing drug and substance abuse problems.

Now, are they off base, Mr. Hayward? What has produced this dramatic difference between the first panel, which consisted of small business people with their unanimous agreement that they were not getting help they needed from the SBA, and State directors who run these programs?

Mr. HAYWARD. It would be critical to find out who Mr. Green contacted.

Chairman WYDEN. You are not doubting his word, are you?

Mr. HAYWARD. I am not doubting his word, but there are people within the SBA organization who have the information and are briefed on the programs provided by NIDA and the Department of Labor. If Mr. Green did not get an individual who is cognizant of that particular information or if he got an employee who was not aware that there was an employee who had knowledge of the programs that NIDA could provide, he could have gotten disinformation.

Chairman WYDEN. He didn't say he got disinformation. He said he did not get any information at all. He was told that nobody had any idea what to do! This whole business of your presentation, saying in your statement that there is a very extensive program going on at SBA when the experts say nothing is going on at all, is disingenuous at best.

I would like to see some specific responses to this comment. In response to Mr. Green, you want to ask us to maybe call Mr. Green back and find out who it was he talked to because maybe he talked to the wrong people. They all said when they called the SBA on this issue, nobody was home.

Do you think there is an effective program at SBA to help these people?

Mr. HAYWARD. Mr. Chairman, I can assure you we are home. We are working diligently with the agencies that have expertise on this area such as NIDA and the Department of Labor. For a long time, we have referred callers from the SBA hotline over to the people who have the expertise to handle the particular specific questions. Mr. Chairman, I would agree that we, at SBA, need to take, and will take, a more aggressive task on informing our district offices. We have an extensive network, 67 offices throughout the country.

In preparation for this hearing, I had consultations with district directors, and was assured by district directors, for example, in Kansas City, where we discussed with the district director and the regional advocate the kinds of information and the kinds of programs that were available to small business owners who were seeking it.

We need to be more aggressive in making sure the small business community is aware we have this information in our district offices and available for them. I cited a couple of examples where district offices have taken the initiative and provided workshops.

I am told those particular workshops, Mr. Chairman, were extremely successful. In region 8 in Denver, we have developed—it is in draft form right now—a handbook and a manual to help educate small business owners and potential owners, of substance abuse problems.

So, and I say it respectfully, that we are home, we are conscious of what the problems are, and that we are working with the agencies that have the expertise. It is extremely unfortunate that individuals who call the SBA will not be channeled to the right department or the people who have the information, and you could get a response like that.

We are a large agency with 4,000-plus employees.

Chairman WYDEN. I have to tell you again, Mr. Hayward, I think there is a real air of irreality about this. You are trying to convey that it is the exception when people don't get help from the SBA.

What the experts were telling us is that it is an exception when someone does find help from the SBA. In fact, when I asked the question about the SBA and how you would grade the SBA, I think it was Mr. Pond from Maryland said the SBA dropped out.

Again, this is not an isolated case. These are three State directors from leading States, New York, Oregon, and Maryland, and each said the exact same thing. Are you at all bothered by the fact that these State directors are saying this?

Mr. HAYWARD. Yes, Mr. Chairman; I think we are bothered, and I can assure you we will go back and discuss with our district directors and our branch offices and ask what their cooperation has been.

There are instances, but I think the point that I was trying to make is that we are certainly not infallible at the agency. We understand there needs to be more education internally and externally. We need to educate the small business community, and we need to educate within our own agency to make sure the information is getting out.

I will take that out, and we will canvass the States where there were problems.

Chairman WYDEN. This subcommittee isn't infallible, either, Mr. Hayward. Nobody is talking about that, but these are more than isolated instances, sir; it was the rule, these State directors told us, to not be able to find assistance. This was what we consistently found in our investigation as well.

I think to dismiss this testimony as an isolated instance, and that maybe somebody—Mr. Green for instance—didn't call the right person, I just think this fails to really get the message about what is going on here.

Now, I am interested in knowing some specifics about the activities of the SBA in coordination with other agencies. Why don't we start with the matter of whether the SBA is a member of the Office of National Control Policy Workplace Committee on Demand Reduction?

Is the SBA part of that? I understand this is a group that meets on an ongoing basis, and I would like to know what the SBA's role on that panel has been?

Mr. HAYWARD. We have cooperated.

Chairman WYDEN. Does SBA serve on this committee?

Mr. HAYWARD. We serve on a number of committees for ONDCP. We have participated in discussions with the standing subcommittee, which include OMB, HHS, Labor, OPM, Justice——

Chairman WYDEN. I really want to know what SBA does on what should be a key committee. Why don't we do it this way: Can you name some initiatives that have come out of your work on this committee with the Office of National Control Policy?

Mr. HAYWARD. We provided information and worked very aggressively on issues dealing with how small businesses would comply with the Federal Drug-Free Workplace Act, and that was a critical element that two people participated in, Peter Weiss and Barney Singer.

Both Mr. Singer and Mr. Weiss, as well as Katherine Marshall, who is Associate Deputy Administrator for Special Officers, have acted when they have been called upon.

Chairman WYDEN. Do you think it would be helpful for you to be a full member of this committee in the future, so there would be, on an ongoing basis, an understanding that when this committee talked about the workplace, SBA would be at the table as a full-fledged member?

It seems to me to be fairly obvious, but what is your reaction?

Mr. HAYWARD. We have been very open with ONDCP, as well as the other agencies. We are available and ready to stand next to them in attempting to solve the problems.

Chairman WYDEN. That is not the question. The question is, do you think it would be helpful to have your agency, the premiere advocate for small business, be a full-fledged member for this premiere committee that is supposed to be attacking problems in the workplace?

Mr. HAYWARD. The answer is yes. I think anytime you have everybody sitting at the table, certainly there is expertise that can be garnered. Mr. Chairman, there are instances where we may not be needed. There are areas we have expertise in, that certainly we can help on. There are other areas that fall within the jurisdiction of the Department of Labor, and we think that is more appropriate for them to handle.

Chairman WYDEN. One another question, I think for all of you at the SBA. You all submit your budget to the Office of National Control Policy; is that correct, Mr. Hayward?

Mr. HAYWARD. Our budget?

Chairman WYDEN. Yes; have it reviewed in order to determine whether it is furthering the national drug control strategy.

Mr. HAYWARD. We submit our budget to the OMB, and I am assuming they pass it on.

Chairman WYDEN. That is not the question. My understanding is that under the national drug strategy you all are supposed to submit your budget to the Office of National Control Policy in order to determine if your agency is doing everything it can to further the national drug strategy.

Mr. HAYWARD. I believe that is correct, Mr. Chairman.

Chairman WYDEN. I am not going to continue this with you because I think it is quite clear that you all are not on the radar screen as far as this is concerned.

This last question, I think, simply highlighted it. My understanding from the staff is that this is something that is supposed to be done, specifically, to give your agency a presence—a visible force—full presence in this fight against drugs.

I intend to pursue this very fully, Mr. Hayward. I think that you all have simply failed to grasp how serious this problem is, and that it is getting worse. You have tried to minimize this problem by coming in after the first panel was very explicit about your lack of participation. They were unanimous in saying the SBA was not doing what needed to be done, and you came in and told us that everything was basically hunky-dory, so we are going to have to look into making some changes.

I, for one, am going to do everything I can to try to turn this around. Let me move on to you, Dr. Autry. I know you heard what was said about your office, as well, and while I think you all have done a bit more than the SBA, it would be physiologically impossible to have done less, as far as I can tell.

I think you also heard Mr. Kushner's comments about the various programs that you run. In fact, let's get back into them specifically so you know what we are talking about here.

On page 7 of his testimony, I think he mentioned 12 programs that were part of NIDA's workplace office, and basically defied all of us to try to figure out how any of them are of benefit to the small businesses.

What is your reaction to the comments that were made about NIDA's programming and how, in spite of these 12 programs, they seem to miss the mark in terms of small business?

Dr. AUTRY. Two comments. First, I certainly agree with Mr. Kushner about the need for better information as to what is available, and, second, there is a need to tailor the information that is available and to make it more applicable to small business. Those are activities which we have under way.

The initial round of materials——

Chairman WYDEN. Let me stop you on that. With respect to these comments in trying to revise these materials, your agency is now in the process of revising them and trying to tailor them more to small business?

Dr. AUTRY. That is correct.

Chairman WYDEN. When do you anticipate that being completed?

Dr. AUTRY. Those are both 1991 and 1992 activities that are under way.

Chairman WYDEN. Will it get done in 1991?

Dr. AUTRY. A lot of it will get done in 1991. We will have an evaluation process that will occur in 1992.

I think in the first round of materials developed by NIDA, we did not focus specifically on the Small Business, and had aimed it at the workplace more generally, initially, at the Federal work force, which was the mandate that came out of the executive order and the statute.

Subsequently, using that as a model, aimed at other public sector programs and private sector programs. As you know, what I said in the testimony, we have already been working with the National Association of State Alcohol and Drug Abuse Council to put on a series of regional workshops.

Those, quite frankly, have not worked out as we hoped they would. What happened was we ended up speaking to the choir, those people who already had programs going.

Chairman WYDEN. Let me stop you there, as well, because I appreciate at least the opportunity to make some progress here by now talking about some of these changes that you are willing to make.

What do you see as the changes that would be needed to make these conferences something that could be a useful tool for Small Business? One of the business people or one of the State directors talked about how unlikely it is for a small businessman to just drop what he is doing and to attend one of these things.

Tell us what you think could be done to make changes there so that could become a useful tool.

Dr. AUTRY. I think the suggestion made about having a series of 1½- to 2-hour conferences to focus on specific topics is a very good suggestion. Similarly, we might be able to scale some of our material to 2-hour and 4-hour presentations.

Second, I think working more directly with community organizations of the chamber of commerce, Kiwanis, and Rotaries rather than working through State health organizations may offer us more inroads into the small business community.

We have advertised in the New York Times, the Wall Street Journal, the Kiplinger Newsletter, and we will do a remailing of all of our materials out to the State directors to make sure that they have the full packet of information available to them, rather than just the pieces as they come on line.

Additionally, I mentioned we do have a how-to manual specifically aimed at small businesses that is under development this year, and we should have that contract out before the end of the fiscal year.

Chairman WYDEN. With respect to your studies indicating that as many as 9 million employed people are workplace substance abusers, this is a staggering number. Does this number indicate that your agency, at the outset, far underestimated the need to target small business, and that because of this increase—increased number of small businesses—you are going to try to turn it around?

Dr. AUTRY. I don't think we underestimated the number of small businesses, quite frankly, I think we didn't look at it from that perspective.

As we have gotten more involved in sort of the hands-on development of model programs, we realized there are a series of different programs that need to be developed and targeted to different industries and different sizes of businesses.

I also think that as we have gotten more involved in working with the OL and with SBA, we have become much more aware of what is happening in the business world. This is not a world in which NIDA has historically dealt. We dealt primarily with the treatment community and schools.

Chairman WYDEN. I think one of the things that concerns me, you at NIDH are all researchers, correct? You are not really involved in hands-on kinds of programs.

Dr. AUTRY. That is a mistaken impression. Research is research but being able to apply it in real life does not preclude its being research.

Chairman WYDEN. Let me recharacterize it. You all are not a hands-on service provider in the sense that Mr. Green and some of these small businesses are going to be looking for, on a daily basis, to try to get technical information about substance abuse programs; isn't that correct?

Dr. AUTRY. That is correct. The National Institute on Drug Abuse does, primarily, three things. We do research to understand what the problems are and how best to address those problems. Second, we provide model projects or programs that we think will be effective interventions, and, last, we provide technology transfer.

Chairman WYDEN. Given the fact you have such an important role in research and technology transfer, obviously talking to small businesses is critical in order to get their input for your research and your work.

With respect to revising these conferences, have you all made any efforts to contact small businesses specifically and say, "Look, our conferences haven't worked very well. We feel that way; the States are feeling that way; what are your ideas for revising these conferences?"

Have you done this? If you have, I would like that submitted for the record so we would know exactly what had been done to get the input of small businesses to turn around this problem.

Dr. AUTRY. We will submit that for the record.

[The information may be found in the appendix.]

Dr. AUTRY. Let me make two comments. One, after every one of these conferences, we do have a debriefing as to what went right and what went wrong.

Second, we have been working with a variety of businesses of different sizes to describe the policies already in place, and we are trying to put that information into manuals and to develop models.

Third, as these models are developed, we will be working more closely with community-level groups such as the chamber and Kiwanis, whom we think have more inroads in the small business community.

Chairman WYDEN. Let me stay with this point. Again, given the fact you all have primarily a research function and technology transfer function, you say you have these conferences, but I think what we have established through your comments is that the people who come to these conferences are the ones least likely to need them; they are labs, and experts, and the like.

What has been done specifically to get the input from businesses that aren't coming to try to figure out a strategy to get them involved?

Dr. AUTRY. We asked our contractor to go back and talk with the people with whom they dealt in setting up the existing regional conferences, to find out whom they contacted, who responded, and who did not. We asked them to revise their plan in setting up the conferences to ensure other people——

Chairman WYDEN. I am going to let this be. I am not convinced that what needs to go on is going on. You have to figure out a way to actually canvass some small businesses who aren't coming to these conferences and get their ideas about what would be more useful—this business of you talking to State directors who contracted with you—I will await your comments in writing. I think you get my drift.

Dr. AUTRY. I understand. As I said in our small business project, where we are developing policies for small business, we are dealing directly with small businesses and other organizations other than State directors.

Chairman WYDEN. Let me move on to you, Mr. Droitsch.

It seems to me you all at the Department of Labor have done the most of anybody. I am concerned about what happens when this $2 million, which is the only funding as far as I can tell, goes.

Mr. DROITSCH. Mr. Chairman, that $2 million is our base funding. I believe that will continue in 1992 under the current budget. So, we will continue to be funded at that level in the area of substance abuse.

Chairman WYDEN. There are to be no cuts in your department?

Mr. DROITSCH. No cuts.

Chairman WYDEN. $2 million out of $11 billion?

Mr. DROITSCH. Well, there are some additional funds which are used in the area of employment training programs, in conjunction with such programs as Job Corps and the Job Training Partnership Act. In terms of the specific direct or indirect assistance to small businesses, it is limited to the $2 million.

Chairman WYDEN. Let me ask you this. You saw the memorandum that was put out by the staff that talks about the role of the Federal agencies and the poorly coordinated efforts between the various agencies that are involved. Is there anything in that that is incorrect?

Mr. DROITSCH. It is a lengthy memo. There is a lot in there that is quite useful and interesting to us. Of course, it is almost a given in this town that we can always improve our coordination, and I think that is certainly something we need to do.

There are some natural linkages here among agencies that I think are very useful. The linkage—we have had a good working relationship with the NIDA workplace efforts. Basically, the way we see it is that HHS are the experts in what works and in the area of research on the treatment of substance abuse—alcohol and illegal drugs.

In terms of our role, we see ourselves as the vehicle, so to speak, to get the information out there. What we heard this morning is that message has not yet been as loud and as clear as it might be.

For that reason, we are planning an information campaign. I think, in addition, there are existing resources in the Federal Government that are quite useful, and with modest adaption could be extremely effective to assist the small business community.

We also are planning to work much more closely with the SBA which has this incredible network of regional offices. I think that network will be a rather powerful megaphone, or system, to get information out. So, I certainly think we need to coordinate better in that area.

Chairman WYDEN. It is potentially a tremendous network. The question is whether that potential is being tapped. I think you have heard me say loud and clear that there is very little evidence that it is.

With respect to the coordination at the National Office of Drug Control Policy, could you describe the efforts that have been made when the people from your three agencies get together and talk, for example, about this problem of small business.

Mr. DROITSCH. The subcommittee meets approximately once a quarter, and it has had a rather full agenda to deal with. The subcommittee deals with such areas as the implementation of the Executive order on the Federal Drug-Free Workplace and the coordination and implementation of the Drug-Free Workplace Act itself.

Finally, I believe, ONDCP may have moved a little more slowly than I would have wished on the basic thrust of how we approach the private sector workplace problem, and I am very pleased with the current national drug control strategy which makes very clear that the solution to this problem in the workplace is the comprehensive five-point program. That states the Federal Government's strategy in very clear and unambiguous terms.

It also says there will be further assistance provided by the Department of Labor and HHS to businesses in the area of workplace substance abuse, and I think that is something we must certainly do to fill that promise. In other words, I think that we are on the right track. As I listen to the totality of this discussion of what we heard this morning, it is a little bit of the glass being half empty or half full. I come back to how amazing it was to me that, after understanding the problem of the scope of substance abuse in the workplace back in 1986, the Department had no inkling of this as a problem.

Certainly, the Department of HHS, through ADAMHA, has long dealt with this issue, and they have been working on this problem for considerably more years. But we were kind of neophytes, and I think to a large degree this is reflected by how companies have behaved.

The first companies to understand substance abuse as a major workplace problem have been larger companies. It is now slowly filtering down to smaller institutions.

The problems that we must address are very clear; it is very difficult for a small businessman to implement comprehensive substance abuse programs. It seems complicated. It is difficult if you haven't spent some time with it, and we, in the Federal Government, certainly must make that path as easy as possible so that they can implement effective programs in the area.

Chairman WYDEN. With respect to any specific initiatives that you can point to from the Office of National Drug Control Policy aimed at small business, what would be the one or two that you think would be most important?

Mr. DROITSCH. They basically have more of a coordinating role, but I believe there are two initiatives that are noted in the strategy that I think will be very important to the area that we are addressing today.

One is the committee to examine with care the effectiveness of the Drug-Free Workplace Act. As has been noted here today, the Drug-Free Workplace Act, while directed at Federal contractors and grantees, has had a powerful spill-over effect, and the ONDCP Subcommittee on Demand Reduction had chartered an effort to review that and to see whether that effort can be made more effective. Clearly, we need to examine the issue of small business in that context.

Chairman WYDEN. That one has not been completed as of this point?

Mr. DROITSCH. That is correct.

Chairman WYDEN. Is that under way?

Mr. DROITSCH. Correct.

Chairman WYDEN. When do you think that will be done?

Mr. DROITSCH. That is scheduled for this year. Sometime this fiscal year. I hope soon.

Chairman WYDEN. But you see, my concern, when I ask about major initiatives that have been completed, you describe one that is under way. Why don't you tell us about the second one.

Mr. DROITSCH. The second effort, which is also on the drawing board, is to examine national drug testing legislation. This is an area of concern, both for the employer and employee. There have been a series of bills introduced in the previous Congress dealing with this issue and the Office of National Drug Control Policy, in conjunction with the various agencies, is planning to examine whether there is a way to deal with this issue on a national basis.

Chairman WYDEN. Let me come back to this question of $2 million because I think even the employee assistance program people were unclear about what the position of DOL is. That program has not been reauthorized at this point; has it?

Mr. DROITSCH. That is correct. Let me clarify that. The department has received for 3 years, fiscal year 1991 being the third and final year, money for grants to promote employee assistance programs. This program instituted 23 grants to promote consortia in this area.

As mentioned, EAP's are a powerful tool for dealing with substance abuse in the workplace. We are exploring with institutions such as chambers of commerce or schools and hospitals as to how to most effectively promote such EAP consortia.

That authorization ends in fiscal year 1991 but the $2 million it represented will continue on for general use in the department for workplace substance abuse. We do not plan to initiate a new grant program at this point, though.

Chairman WYDEN. All right, that is helpful. So, the existing $2 million grant program which seems to have gotten pretty good reviews, that program is not specifically going to be continued. But the $2 million, you hope, will be used for something else.

Mr. DROITSCH. Well, in particular, the areas we talked about in terms of promoting substance abuse programs to the small business community, which we see as the largest chunk of the workplace.

Chairman WYDEN. I would like you to do two things on this. I would like you to meet with the people from the EAPA because they were informed as recently as yesterday that, just the first part of your statement, the existing grant program, would not be continued.

Mr. DROITSCH. Yes, sir.

Chairman WYDEN. Then I would like to have you furnish for the record exactly what you plan to do next with any money that Congress authorizes in this area because I think that given that $11 billion is being spent, we ought to know exactly what is being done in your shop, which seems to have, at least in the past, had the only specific program, and now there is some confusion as to what will transpire next.

Mr. DROITSCH. I will be pleased to.

Chairman WYDEN. Gentlemen, I am going to excuse you but I think you can see, both from the previous panel and from the comments that I have made with regard to each of you, that I think what the Federal Government is doing is simply inadequate to address these issues.

The days of playing this down and minimizing it are over. I am going to do everything that I can in the days ahead to try to get a full-fledged program in place because the small business workplace is where the drug abuse and substance abuse problems of the future are going to land.

They are going to land in the small business sector, and they are telling us that they are completely unprepared for this kind of onslaught. I must tell you my sense is that the Federal Government is not yet in a position to give them a lot of help and a lot more is going to have to be done.

We appreciate your time. Do any of you wish to add anything further?

Chairman WYDEN. Our next panel is Dr. Susan Berger, Ed.D., director, Small Business Project, Corporation Against Drug Abuse, Washington, DC, and William Jernberg, president, Jernberg Corp., Wooster, Massachusetts, representing the Employee Assistance Professionals Association.

Welcome both of you, Dr. Berger and Mr. Jernberg. We swear all our witnesses who come before us. Do either of you have any objection to being sworn?

[Witnesses sworn.]

Chairman WYDEN. We are going to make sure your prepared remarks are a part of the hearing record in their entirety. If you would summarize your principal concerns in the interest of time, that would be helpful. Dr. Berger.

TESTIMONY OF SUSAN A. BERGER, Ed.D., DIRECTOR, SMALL BUSINESS PROJECT, CORPORATION AGAINST DRUG ABUSE, WASHINGTON, DC

Dr. BERGER. Thank you very much for inviting me to come here today and to offer my comments on the problems of substance abuse in the workplace and their effect on small businesses.

CADA is a nonprofit organization formed in 1988 by the major private sector employers in the Washington metropolitan area.

Our goals are to prevent substance abuse in the workplace, to establish model programs, and promote drug-free programs among the private sector.

I am director of the small business project which is funded solely by a major foundation grant as well as other private donations. We are also developing a consortium for small employers. I would like to say we are also delivering EAP's in our approach, and that is one of the major points I would like to make today in terms of what we think is important. We don't believe necessarily that these programs will sell themselves because I think small employers, as we have learned recently in a survey which indicated, at least in the metropolitan area, that while they perceive drugs to be a major problem in the workplace and at the national level, they did not perceive that they had a problem themselves.

So, I think in one sense we have our work cut out for us. I think one of the things that some of the previous witnesses indicated, or seemed to demonstrate, is that the private sector knows how to reach other business people. CADA has been successful in training programs and workshops because we understand how to appeal to small employers because many of us have run small businesses ourselves.

Second, I would like to emphasize that in terms of developing consortia and providing programs that may be supported through Federal funds that the cost of these are not necessarily cheap. One of the problems, and one of the reasons that small employers have not been reached by drug-free workplace programs including EAP's, is that it is very hard to reach them, and the costs proportionately are much greater for them to provide these programs. We feel at the private sector level, particularly, that small businesses really have a disproportionate share of the burden in terms of paying for these programs.

Based on our research, I would like to indicate that there are two particular areas I would like to focus on.

Much has been said about the impact of substance abuse, problems on small businesses, and we believe they are disproportionate because every small business has fewer employees and fewer slack resources to handle unanticipated expenses. Therefore, every person and every dollar really counts. So, the loss of these assets can be devastating in terms of quality, competitive advantage, customer service, and costs.

You have heard from others how vulnerable small business can be in terms of these problems. We would like to focus on several areas, in terms of EAP's and testing programs.

First, like large businesses, small businesses represent many diverse sizes and industries, but they are widely dispersed geographically and each company operates independently. So, the economies of scale found in large companies are simply not available. That means that the cost of purchasing drug-free workplace programs, which we define somewhat differently from some of the previous witnesses, include consultation, legal advice, testing, and benefits. Those costs can range from 50 percent to 300 percent higher than for large companies.

Second, smaller companies frequently do not have written personnel policies so that developing a drug-free workplace policy means frequently that they are in a vacuum. They do not have the human resource personnel necessarily that can fully apply these things.

As a result, one of the consequences is that small employers do not recognize problems of substance abuse or think they can take care of the problems on their own, and their efforts frequently backfire. Consequently, they suffer decline in productivity and increases in costs. That is a major barrier to reaching them, by the way, and something we feel as business people that we have a better shot at doing because of our knowledge of how to appeal to businesses.

A small percentage of small employers have instituted testing and termination policies, firing the employee without providing any opportunity for rehabilitation and returning to the job. Since the average cost of replacing such employee is approximately $7,000, the cost of providing an EAP through a small business consortium can be a cost-effective investment.

In CADA's small business consortium for a company of 100 employees, the total costs might be about $3,600 which is about half the cost of replacement of one employee.

The second major issue that has not been adequately addressed this morning is something of great concern to small employers and that has to do with health benefits. We cannot talk about developing drug-free workplace programs and having EAP Programs in place which refer people to treatment without addressing the need for health insurance.

Many small employers, as you know, do not have adequate health insurance. The trend now, in fact, is that in some insurance companies they are trying to make bare-bones programs attractive to small employers and the parts they are cutting out are mental health and substance abuse coverage.

That is not productive to the drug-free workplace effort. That is something we are particularly concerned about.

The other issue is because small employers are subject to underwriting exclusions, they don't have access to managed care networks as larger employers do. So, if they can even obtain health benefits for their employees, they pay exponentially higher rates than larger employers and frequently for poorer coverage.

One of our recommendations is that EAP's and other drug-free workplace mandates cannot be effective unless treatment and coverage are included in an affordable package and made accessible to smaller employers.

In terms of impact of the Federal initiatives, we believe the Drug-Free Workplace Act has had a positive effect in raising awareness of drug-free workplace problems.

But it has not gone far enough. It requires neither an employee assistance program nor drug testing, as do the Department of Defense and Department of Transportation regulations. None of these laws and regulations acknowledge alcohol problems in the workplace which continue to have by far the most serious and damaging effects on safety and productivity.

Finally, there are no provisions for benefits coverage for rehabilitation, if needed. Without which, an integrated concept of workplace substance abuse prevention—including policies, programs for EAP and testing, and the benefits to cover the costs of treatment—the mandates to provide a drug-free workplace cannot be fully effective.

In terms of the Federal agencies, much discussion has gone on today. I would like to point out that, in spite of the stated objections the ONDCP to assist small employers, we in the private sector believe that the Federal initiatives focused on the workplace have been inadequate. Workplace substance abuse threatens the economic viability of our small businesses domestically and our competitiveness in the global marketplace.

In addition, small employers employ more than half the Nation's workers. They are also the parents of our future workforce. Yet, in the 1991 National Drug Control Strategy, a document of almost 200 pages, it contained only three and a half pages on the workplace.

Based on our experience, the Small Business Administration does not or has not involved itself with drug-related issues in small businesses. The Department of Labor is the only Federal agency which has provided contract dollars to institute EAP's, as you heard today. We believe DOL is the most qualified Federal agency to deal with workplace issues. We would support them in taking a leadership role in coordinating a strategy for solving workplace problems.

As a private sector organization, CADA has seen businesses benefit from these programs, and we are committed to assisting employers, large and small, in developing them.

But the private sector cannot do it alone. Vigorous Federal leadership and designated resources for small employers are required along with a coordinated strategy which targets: First, startup funds to assist business organizations, like CADA; second, technical assistance on legal and human resource issues employers need to know in addition to consultation on the programs; third, public education campaigns targeting small employers to inform them and engage them in starting the programs; and four, support for innovative models, particularly in the areas of vertically integrated programs including health benefits and human resource policies; creative mechanisms and cooperative arrangements for large and small employees, including EAP's and health and mental health benefits.

In conclusion, substance abuse is a serious problem as you have indicated today, particularly in the private sector and in the small business private sector. CADA appreciates your concern about Federal assistance to the private sector in solving these problems, and we look forward to working with you.

[Dr. Berger's statement may be found in the appendix.]

Chairman WYDEN. Thank you. We will have questions in a moment.

TESTIMONY OF BILL JERNBERG, PRESIDENT, JERNBERG CORP., ON BEHALF OF EMPLOYEE ASSISTANCE PROFESSIONALS ASSOCIATION

Mr. JERNBERG. Thank you, sir. It is a pleasure to be here.

Half my town has been watching C-Span since 10 o'clock this morning, and I think they will be disappointed.

Chairman WYDEN. Because you are not on?

Mr. JERNBERG. Yes, sir. I will depart from the written testimony that you have and kind of ad lib as you suggested, sir, and comment on some highlights.

I am here representing not only the Jernberg Corp., but also the Employee Assistance Program Association which is the trade association, if you will, for our field or for the employee assistance program field and practitioners.

I heard the term EAP used so often this morning, and, yet, I don't know how many people really know what we are talking about when we say EAP. My company manages EAP's for some 1,200 small businesses throughout North America. The average size is about 50 employees. Believe me, they are far more familiar with EPA than they are EAP. I think all of us in this room have had occasion to use an EAP, whether that be for alcohol, or drug abuse, or family problems, or divorce/single parent issues, financial, legal, stress, you name it.

Most of us are not above those kinds of issues. Most of us have experienced those kinds of problems and would hopefully have access to EAP. In smaller businesses you don't have it usually because EAP's are known to be only in big business. There are a number of reasons for that. Small business just does not catch up and do what big business does. From a provider end there are not a lot of companies like mine that do deliver EAP services to small companies.

I could not do it if it was not for my relationship with the Paul Revere Insurance Co. They have eliminated the selling expense and made it possible for us to provide EAP's to businesses as small as nine employees.

I have a note here in my notes which says "just do it." Just do it, I think, is what we have been doing while the Government talks about it and while other associations talk about it. In all frankness, we cannot, in the private-for-profit sector, sit around and talk about these things. That is why for us it happens, and that is why we have the EAP's we have. I have been delighted to see the word "alcohol" mentioned this morning.

Too frequently, the emphasis is simply on drug abuse. I will tell you, of all the cases our company deals with, one out of two essentially is some form of alcohol abuse that is involved. It may initially show up as a marriage or financial problem but the fact is alcohol is somewhere at the root of that. But it is very popular to be antidrug. It is not so popular to be antialcohol. I think that is why the drugs get the attention that they do.

It is interesting to me, too, that we can go with our kids in school and campaign in an educational sense about no smoking and the use of seat belts. I will tell you today if I smoke my youngsters flip out. If I don't use my seat belt they flip out. I don't know it is such a problem for us from an educational standpoint to make that same kind of message heard by our kids related to drugs and alcohol.

I don't know what happens to Federal efforts. When I first entered this field in the early 1970's, things were booming. Don Godwin and Tom Delaney are in this room. Both of them were very active. It seems like in the early 1970's things were happening, and I don't know that they are today.

Stigma is still a big issue out there. I have heard the term cost as a deterrent to EAP's and small business. I would have to take an exception to that because I am able to give EAP's away. To the companies I give them to, thank you Paul Revere, 9 out of 10 don't take them; 9 out of 10 say we don't have those kinds of problems here. We don't need an EAP.

So, even when the thing is free, the stigma and awareness level is such that people don't pick up on the EAP even when it is a no-cost item. I would suggest that a 1-day or 2½-day conference will not fix this. There has to be some kind of massive campaign of an educational nature and an awareness campaign that brings us back to the individual CBO. Interesting, too, that a company will not bat an eye at spending $100 on drug testing but will not spend $25 a year on an EAP for an employee and his or her family members.

Those are the highlights I wanted to hit. I thank you very much for having an opportunity to appear here today.

[Mr. Jernberg's statement, with attachments, may be found in the appendix.]

Chairman **Wyden**. Both of you have been very helpful. Part of the difficulty in going last is so much turf has been pummeled by the time you get up here, in fact, it is like the old political saying, "Everything has been said but not everyone has said it."

You all, I know, are doing very good work and very important work. We appreciate it.

I have a couple of questions. Both of you, I think, cite the idea that these employee assistance programs can be of great benefit to small business and maybe the best hope for many small businesses. Do you think that Federal drug strategy ought to be, for example, amended to encourage better usage of these employee assistance programs, Dr. Berger?

Dr. **Berger**. When you say better usage, I am not sure; by the small employer community?

Chairman **Wyden**. Yes.

Dr. **Berger**. This is broadening significantly.

Chairman **Wyden**. Yes; something that would, in effect, allow at the Federal level some opportunity for easier access and information assistance in terms of trying to get these off the ground.

Dr. **Berger**. Absolutely, although I will be honest with you, I think one of the problems of communicating that information from a Federal level is that it is a grassroots and marketing program. It varies from one market to another as to how to appeal to employers.

I have heard a lot about trying to reach employers through chambers of commerce. Our experiences are that chambers are very variable. I definitely think there should be the mandate and the leadership from the Federal level that supports the local and State level initiatives in this direction.

Chairman **Wyden**. Mr. Jernberg.

Mr. **Jernberg**. I think the Federal Government sometimes messes things up. This might not be the right place to say it, but I have to tell you folks——

Chairman **Wyden**. Just let her rip.

Mr. **Jernberg**. The Drug-Free Workplace Act is a case in point. I have been in this field for 20 years, and we have been teaching in the EAP field that the work performance is the issue. We don't train supervisors to be diagnosticians. We train them to be seeing the level of performance. When it is below standard, we try to correct it through discipline or management.

If all else fails, then we make a referral to EAP. That is how it has been all these years until the Drug-Free Workplace Act darkened our doors and said now we are going to train supervisors to detect drug abuse.

What is really happening here? What is this all about? I see that piece of legislation, for example, as very confusing.

Another thing, a small company that will do business with the Federal Government, and I have several clients like that myself, before they came to us, they will call this 800 number that NIDA has and that, to them, is compliance, when, in fact, that is not, but this is kind of the word that gets out.

I don't go out and bang really loudly on how well the Federal Government does on some of these things, not that they don't do some things real well. After I say these things sometimes you wish you were representing yourself and not the organization. I hope I haven't made them mad.

Chairman **Wyden**. I think your point is well taken. Nobody up here is saying the Federal Government should take over this field. I think you heard me say to Mr. Kushner who may have a very good idea of trying to get the States a small amount of funds in the form of block grants. But, as I said, I am not prepared to spend more money right now.

I want to figure out why this $11 billion doesn't seem to be reaching the small businesses as it needs to. So, there is not any support that I know of on this side of the dais to federalize the solution either with programs or expenditures.

The question is whether there are some useful things that the Federal Government can do. I think you summed it up, Mr. Jernberg, in saying that you have to identify what is useful and what is not.

I think you all have given us some good suggestions.

I only have one other question. I gather both of you think, and I think it echoes what Ms. Saunders from the State of New York said, that this idea of consortiums—where you have pooled groups of small businesses—is something that ought to be encouraged and makes sense because it is one way for small businesses to get around the size problem and allows them to share costs, and share information, and that sort of thing; is that correct.

Mr. **Jernberg**. Yes, sir.

Dr. **Berger**. Yes, sir.

Chairman **Wyden**. The Federal Government has not done a lot of that in the past and nobody else has.

Dr. **Berger**. I think the Department of Labor has.

Chairman **Wyden**. That is right.

Dr. **Berger**. I believe that just establishing a consortium that offers an EAP makes it a harder sell because I think one of the real concerns of small employers is health insurance. As a practical matter it is important to link EAP's with coverage so that people can get treatment who need it.

Chairman **Wyden**. Well let me ask you just one other question. What did you think of the comments that you heard from the Federal agencies a few minutes ago? Did you agree with the gentleman from the SBA that, at least prior to my comments, everything was kind of hunky dory, and they were just moving along and taking care of folks when they needed to.

Dr. Berger.

Dr. **Berger**. It is our experience that the SBA has got on board very late in this and, frankly, they had called us asking information about what is going on in small businesses.

Chairman **Wyden**. For purposes of this hearing?

Dr. **Berger**. I believe so.

Chairman **Wyden**. So, when they were preparing for this hearing, they called up you in the private sector to get your opinion as to what was going on in terms of programming and services for small businesses?

Dr. **Berger**. Yes, sir.

Chairman **Wyden**. With that, I think I am going to wrap the hearing up.

Dr. Jernberg.

Mr. **Jernberg**. That is fine with me. It is a good place to stop.

Chairman **Wyden**. You all have been very helpful. This has been an enlightening 3½ hours.

Dr. Berger, you have brought the ultimate enlightenment.

The subcommittee is adjourned.

[Whereupon, at 1:35 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

CONGRESSMAN DAVE CAMP
STATEMENT BEFORE SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND ENERGY
March 8, 1991

Mr. Chairman, as the nation's attention shifts from the Persian Gulf War and the foreign policy front to our domestic difficulties, this hearing today is an important step in addressing a problem that is facing our nation. Many know of and see the drugs in our streets, which is a threat to our youth and has resulted in a dramatic increase in violent drug-related crimes. Furthermore, the scourge of drug use in the work place is affecting the very fabric of our American work ethic and more importantly the health and safety of the American public.

We have seen evidence that our nation's drug problem is diminishing. There is progress in the general population and among workers. Recent data from a drug testing company has shown that 11 percent of those employees tested for drugs were positive in 1990, down from 18.1 percent in 1987. The President has taken measures which have helped contribute to this decline. The Office of National Drug Control Policy Workplace Subcommittee is one effort on the part of many departments and agencies of government, some of which are represented here today, to facilitate coordinated drug control policies. This is an important starting point in the direction we must head. The federal government must continue to implement the steps it has taken to police drugs in its own workplace. Through continued drug education, employee training and counselling, as well as drug testing, we can reach our goals.

While we have had accomplishments, there is still work to be done. We do need to offer help to small businesses in the private sector. The role of the federal government should be to provide guidance and technical assistance in an effort to help reduce costs to small businesses. However, in the end the private sector must be the one to take the initiative to implement their own plans, with informational assistance from the government, to help address the problems unique to their workplace.

In closing, it is my hope that Congress quickly adopts President Bush's anti-crime package, which is an effective strategy for curtailing drug abuse and drug related crime. This strategy will not only help eliminate drug problems from the workplace, but also in our neighborhood schools and communities throughout the nation.

OUR BUSINESS IS FOLDING RB RAPID BIND INC.

United States House of Representatives
Committee on Small Business

Subcommittee on Regulation
Business Opportunities and Energy
B-363 Rayburn House Office Building
Washington, D.C. 20515

JOHN E. GOCHE, PRESIDENT

Verbal and Written Testimony

In late 1985 and early 1986, my company, Rapid Bind, Inc., a small business located in Portland, Oregon that employed 21 people at the time, developed some very severe drug problems. Today over five years later, with lots of hard work, we have a handle on the problem. We will have substance abuse testing in place very shortly. Today we employ approximately 35 people. In the next few pages I will explain what we attempted to do and the frustration we faced in combating substance abuse and other problems.

By early 1986 the problem was severe. Several employees were suspected of using drugs while on the job and during breaks. Drugs were very much in evidence near the Company parking area after the daily shifts were completed. We also strongly suspected that one or more of the employees were selling the illegal substances. The younger people, new to the working world, were quickly being drawn to this group. In other words, the peer pressure was "use" rather than "not use".

As the owner, I spent considerable time talking and looking for some help with this problem. At that time almost nothing was available. Finally, I was put in touch with a counselor that agreed to come in and talk to our crew. I closed the plant and brought both our day and swing shifts together for a meeting. I introduced the counselor, then left the room. The main meeting went on for one and one half hours. Several employees stayed and talked for at least another hour following the meeting, the results were almost immediate. The peer pressure started to change to "don't use", but the problem still existed. Several employees called the counselor for additional help after the meeting. At about this point in time we started working on an employee handbook and personnel policy manual. Not much was available in the way of help on this either. I borrowed a manual from a company about twice our size and went to work on it. In the manual I made the language as strong as legal counsel would allow, concerning substance abuse. This took almost two years to complete and is now in place and working quite effectively.

July 1989 was a traumatic, emotional month at Rapid Bind. A six year term employee who was 25 years old, married, with a 9 month old child, committed suicide. Many of his best friends worked at Rapid Bind. In the days that followed the suicide, the effect on the employees was evident. As a Company we just could not produce a product. Emotionally we were drained. After many phone calls to various agencies and friends I was able to locate a counselor who came

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in and talked to the entire crew and then came back on a one-to-one basis. It was amazing how quickly we healed, emotionally, with this help.
The reason I point this out is to show that this is the time we began to realize the great help an Employee Assistance Program (EAP) could be to a Company our size.

In the fall and winter of 1989 several discussions went on about drug testing and EAP's for small firms. An Eap association member spoke at IPMA (In-Plant Managers Association). At this meeting I asked if any EAP's were working with small firms through any industry group associations. The Oregon Truckers Association had set up an Employee Assistance Program for members but not much was known about it. Also, the Oregon Small Business Council advertised a packet of information which was available to help small firms. I picked up a packet and started to work on a policy statement.

In October of 1989, I attended a "nuts-n-bolts" luncheon put on by Pacific Printing Industries (PPI), an industry trade association. The topic was "Drug Use in the Industry". Out of this meeting a committee was formed to poll PPI members interested in starting an EAP and to solicit interested EAP providers. Thirteen PPI member companies representing approximately 400 employees expressed an interest. Three PPI members indicated that EAP's were part of their benefit program. Fifteen EAP providers submitted proposals to PPI. A firm was selected and approved by the PPI Board of Directors in April and the program went into effect in August, 1990. At this time the association EAP has 12 businesses ranging in size from 18 to 190 employees in Oregon and Washington with over 650 total employees.

The selected EAP provider has helped our company considerably with setting up substance abuse testing, But we still are not testing!

Unlike large companies, this is a long slow process for a small business owner. We do not have the extra personnel it takes to put this program together. Myself and other personnel in the company work on setting up programs and policies when possible. We are a growing company and therefore must budget our time between personnel and production. We just don't have a lot of time available!

Our company appears to be a role model for the work we have done in this area. Yet, as the owner I feel we haven't done enough. It has taken too long to put together.

As small businesses I feel we become targeted by substance abusers because they know they will be tested at the larger firms. Consequently, I feel they seek out the smaller firms who do not test.

Another problem with small business owners is just plain lack-of-awareness of the problem and a fear to admit that a problem exists in their firm.

I am not aware of any federal help available in Portland, Oregon for firms like ours. The Oregon Small Business/Employee Assistance Program Initiative Committee has been formed and we expect to see considerable help from this source. Private help is available, but in most cases it is just too expensive for the small firm unless it is through a group of firms such as PPI, our trade association.

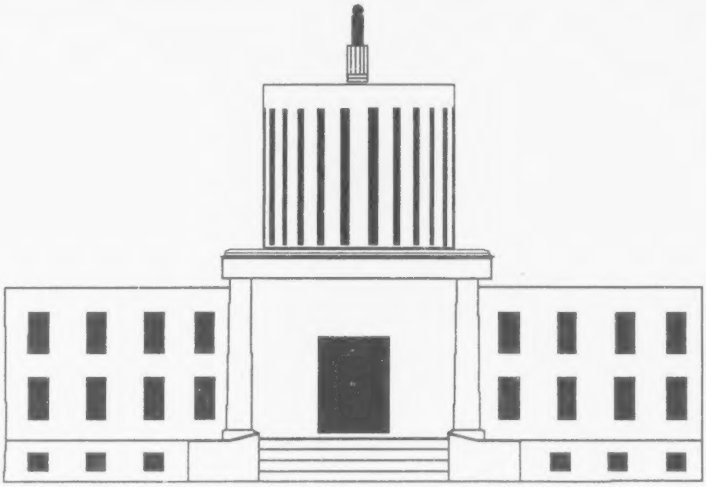
The problems are large and the federal help, as I see it, is minimal. It appears that all of the help has gone to the larger firms. My recommendation would be to institute programs similar to those currently being used by the Oregon Small Business Council, such as advertising and mailing direct to small businesses to advise them of what help is available. Sample program packets covering resources, legal questions and sample policies would be extremely helpful because many times the small business owner doesn't know where to start. Regional seminars to let owners know what is available also would help.

The problems are large and the solutions are difficult! Additional federal, state and local assistance to combat drugs in the workplace can certainly help us to become safer and more productive in today's market place.

This testimony may not shed a good light on the federal programs but, hopefully, it will help small business owners with the same problems we have encountered.

Sincerely,

John E. Goche'
Owner/President
Rapid Bind, Inc.



Testimony to:

Small Business Subcommittee
on Regulation, Business Opportunity
and Energy

United States House of Representatives

March 8, 1991

by

Jeffrey N. Kushner, Director

Office on Alcohol and Drug Abuse Programs

State of Oregon

Speech to Wyden's Committee--March 8, 1991

Oregon has an alcohol and other drug abuse problem, not unlike most other states. However, Oregon is ranked #3 in production of marijuana and #3 in production of methamphetamine.

Oregon, with its central location on the West Coast, is a drug trafficking hub. Drugs come into Oregon from Asia, Central America, and Mexico. Between 70 and 78 percent of felony arrests in Portland who voluntarily have a urinalysis test done, test positive for illicit drugs.

I could tell you about our adolescent drug use problems and the problems with drug affected babies, domestic violence, child abuse etc., but suffice it to say Oregon has a drug abuse problem; however, from many standpoints, we are working on it and showing progress. I am here today to talk with you about one of the areas where, I believe, we have made good progress and provide you information on Oregon's drug-free workplace strategies.

Most managers of businesses in Oregon would readily agree that drug-related incidents jeopardize safety, productivity and impact morale in the workplace. Unfortunately, if you asked many of our managers what they are seriously doing about alcohol and other drug related problems among their employees and their families, the answer would be "very little." We know we cannot afford to accept "very little" as an answer.

According to the National Council on Alcoholism, between 5 and 10 percent of our employees suffer from alcoholism and 3 to 7 percent of the employed population use some form of illicit drug on a daily basis. 10 to 23 percent of U.S. workers use dangerous drugs.

According to Mark A. de Bernardo, then with the U. S. Chamber of Commerce, (1987) in a recent survey of users asking for help, 75 percent indicated they use drugs on the job, 64 percent had let drugs adversely affect their job performance, and 44 percent sold drugs to other employees.

Cook and Harrell of the Institute for Social Analysis (here in Washington D.C.) analyzed interviews of 1,716 working adults in a study published in 1987. The study consisted of face-to-face interviews with members of a nationally representative sample of U.S. households. The results confirmed that there is considerable illicit drug use among working adults (employed adults 18-34 years of age - 24 percent of males, and 14 percent of females used marijuana in the past month, 5 percent of males and 2 percent of females had used cocaine in the past month). Further, results confirmed that drug use rates differ greatly according to sex, education, job category and especially age. Current use is more prevalent among skilled trade workers, sales personnel, business owners, and service workers.

According to the U. S. Chamber of Commerce, a typical recreational drug user in today's workforce is:

2.2 times more likely to request early dismissal or time off.

2.5 times more likely to have absences of eight days or more.

3 times more likely to be late to work.

3.6 times more likely to injure themselves or another person in a workplace accident.

5 times more likely to be involved in an accident off the job (which, in turn, affects attendance or performance on the job).

5 times more likely to file a workers' compensation claim.

7 times more likely to have wage garnishments, and one-third less productive.

They also incur 300 percent higher medical costs and benefits.

As employers and managers we have significant potential to influence employee alcohol and other drug use, much greater than we realize if we choose to act. Even after an employee has developed a problem we have remarkable leverage to move the impaired employee into treatment. Keeping a job is critical for an abusing employee. A job is evidence that there is no problem and provides the means to purchase more alcohol and other drugs. A job is usually the last thing to go.

Drug-free workplace policy and its enforcement (or lack thereof) directly influences the degree of alcohol and drug abuse in the workplace. When guidelines for drinking and other drug use are unclear or permissive, a high rate of abuse and dependency will exist. On the other hand, when the rules and norms for alcohol and other drug use are clear, generally accepted, accompanied by rationale, and there are consistently enforced sanctions for violation of the rules, then the abuse rate will be low. I presume this is one of the reasons the United States Congress passed the Drug-Free Workplace Act and several federal agencies passed associated regulations. I believe this was an important and major step forward.

At the same time, however, many businesses have taken it upon themselves to develop policy and programs and have substantially reduced their drug problems.

For example, the Oregon Business Council (Oregon's 43 largest businesses and industries) initiated in February of 1989 a program called Fightback Against Drugs, which encompasses six principles:

- Set in writing a policy on the use of illegal drugs. The policy should prohibit employees from using, selling, possessing, or being under the influence of illegal drugs on company premises or during work time.

- State as part of the policy that any violation will result in immediate disciplinary action, which may include termination.

- Require applicants for employment to take and successfully pass a pre-employment screening test for illegal drugs as a condition of employment.

- Conduct screening tests for illegal drugs upon reasonable suspicion that a current employee is under the influence of illegal drugs or is involved in a lost-time accident.

- Provide the opportunity for rehabilitation to employees using illegal drugs, either by confidential counseling through an employee assistance program or through a company-approved treatment facility. Encourage employees and employees' families to seek assistance.

- Establish education programs for employees and employees' families on the dangers of drug abuse, the company's policy on the use of illegal drugs, and the rehabilitation opportunities provided by the company.

Let me tell you what has happened between February of 1989 and 17 months later, i.e., July of 1990.

> In February of 1989, 87% had treatment program accessibility for their employees--by July of 1990, 100% of employees had treatment accessibility.
>
> In February of 1989, 83% had education programs--by July of 1990, 93% had education programs.
>
> In 1989, 65% of OBC members had a written Drug-Free Workplace Policy--by July of 1990, 100% had a written policy.
>
> In February of 1989, 39% were testing applicants for jobs for drug use--by July of 1990, 73% were doing it and this figure continues to increase.

In February of 1989, 31% tested employees for cause--in July of 1990 that figure had risen to 80%.

Here are some examples of results by OBC members:

1. Hoffman Construction Company added drug testing to its safety program (1987) and eliminated lost-time accidents after suffering 32 in 1985. Worker's Compensation losses dropped from $685,000 in 1985 to $118,000 in 1987.

2. Portland General Electric experienced a 12.5% failure rate when pre-employment testing was begun in 1988. The rate in 1990 was less than 1% with twice as many applicants being tested.

3. An increase in supervisory referrals to treatment of 80% from 1988 to 1989 at Bohemia Lumber Inc., in Eugene, Oregon. Bohemia has reduced its workers compensation costs from $1.9 million in 1983-84 to $786,000 in 1987-88.

4. Precision Castparts Corporation initiated an EAP and experienced a 4.2% reduction in positive drug screens following industrial accidents. AA/NA now meet in the company's facilities.

5. Ochoco Lumber Company experienced a drop in absenteeism rate from 5.5% to 2.1% in Central Oregon.

6. U.S. Bancorp experienced noticeable increases in their EAP use when pre-employment testing was initiated.

Similar results at other member companies have been documented.

What these big businesses are finding is that applicants just get up and walk out when they discover that they will be pre-employment tested. If the big businesses have policies, train supervisors to identify alcohol and other drug problems, have education and treatment, and are doing some level of drug testing . . . where will the drug users go? We believe there is strong potential for them to end up working in smaller Oregon businesses which are over 95 percent of our businesses, and we must be prepared!

Just because one lives in a rural area and owns or manages a small business, ndustry, or agency does not mean they will have less of an alcohol or drug problem among their employees. There is no rationale for this mind set. here have been studies recently to look at rural alcohol and other drug use vs. urban use. Generally, little difference in usage levels can be found. It is true of the study done recently by the General Accounting Office in September of 1990 entitled, Rural Drug Abuse Prevalence, Relation to Crime, and Programs. This study concluded that "Total substance abuse (alcohol abuse plus other drug abuse) rates in rural states are about as high as in nonrural states." The GAO also found that, "Rural areas have arrest rates for substances abuse violations that are as high as those in nonrural areas."

The point being, that big or small, rural or urban, businesses are all vulnerable to problems from employee drug use and we cannot afford to write this problem off in rural areas and small businesses. In Oregon today, small businesses are in double jeopardy. Not only are drug abuse problems just as prevalent outside of the metropolitan areas of the state as they are inside, but big business and industry in Oregon is doing something about their problems. So...we must help smaller business rise to this challenge.

Oregon is not unique in this regard. All across the country, big business is working on drug free workplace policy and programs. The most typical response by business and industry has been to adopt employee assistance programs (EAPs), and/or to implement a, drug testing program. These two strategies are the most difficult for small businesses to develop due to a lack of resources and the necessary critical mass of employees needed to make these strategies cost effective.

In a moment, I will tell you of an initiative in Oregon to help solve this problem but I must tell you that I have been very disappointed in the federal governments response to the issue of helping small businesses develop effective drug free workplace programs. Agencies at the federal level seems to be enamored by working with IBM, GM, etc., while doing very little for the "little guy." As one example, I queried NIDA's Workplace Policy office for two items on several occasions:

1) materials specifically to help small businesses develop drug free workplace programs, and
2) materials to help businesses that employ primarily youth,

The response was, "Although we have been able to respond to the most global and generic needs in the field, we have clearly been unable to address many specialized areas of interest such as yours." In November of 1989, an article appeared in the EAPA Exchange as a public policy feature. Three of the four pages described "Programs, Projects, Services," of the NIDA Workplace office. I am going to quickly read you the 12 programs listed. Tell me which ones are structured to help 95% of American businesses, i.e. small businesses of 300 employees or less:

1. A National Helpline
2. Work with other federal agencies
3. Research Grants
4. National Research Conferences
5. Department of Labor Regional Office Initiative
6. Drug-Free Workplace Workshops in 10 states
7. Guidelines for the Development and Assessment of a Comprehensive Federal Employee Assistance Program
8. Model Plan for a Drug-Free Workplace
9. Drug Abuse Curriculum for Employee Assistance Professionals
10. Presentation at the 19th EAPA National Conference
11. Demonstration project to develop EAP certification protocol for EAPs, and
12. Policy Models Project

Now, these all may be good efforts (although, I know they are not) but for goodness sake, where is the grain and seed owner who employs 20 people in Ontario, Oregon, going to get help from this list? Or the Bend River Inn Motel owner who employs 30-40 employees. It won't happen.

And where is the cooperation at the federal level between ONDEP, NIDA, DOL and the Small Business Administration. Is it true that the turf battles are so great that they cannot work together to help solve this country's small businesses alcohol and other drug problems? And, why has the United States Congress let this happen?

It is time for the federal government to get its act together and help small business and industry in this country. The results of drug abuse in small businesses can be devastating. Now, I can assure you, we don't have all the answers in Oregon...but we are trying.

The Office of Alcohol and Drug Abuse Programs back in October of 1990 issued a Request For Proposal called the Oregon Small Business/Employee Assistance Program Initiative. This initiative includes six activities:

1. Appoint statewide OSB/EAP steering committee and advisory board to oversee the project.

2. Utilize the drug-free workplace campaign developed for Portland by Marx/Knoll, Denight and Dodge (Regional Drug Initiative) in other parts of Oregon.

3. Survey small businesses to determine the level of:
   - drug-free workplace policy in place,
   - access to employee assistance programs for their employees,
   - effort by these businesses to help their communities develop drug-free norms.

4. Develop and disseminate materials regarding what small businesses can do to reduce alcohol and other drug problems.

5. Fund up to 10 demonstration grants to help small business:
   - develop drug-free workplace policy,
   - reinforce drug-free norms in the community, and

- develop access to employee assistance programs for employees by building consortiums of small businesses or through trade associations.

6. Re-survey to evaluate effort and determine whether our objectives in #3 above have been met.

I believe it is critical for business and industry all across Oregon to become involved in reducing alcohol and other drug use--because these efforts will impact the broader community as well.

Particular success has occurred in reducing alcohol and other drug problems where communities have come together and coordinated efforts. These communities have planned and initiated efforts horizontally across the community in a lock-step coordinated fashion. Without such coordination, efforts are less successful, for example, if local schools initiate the best alcohol and other drug prevention curriculum in the country but do not have the visible support and action of local businesses and industry as well as parents, the media, and service organizations, that curriculum will not be nearly as effective as it could be in reducing adolescent drug use.

In summary, alcohol and other drug abuse must be recognized as a problem in the workplace no matter what the size of the business.

Business and industry--big and small--is in a good position to influence community attitudes and norms concerning alcohol and other drug abuse. A clearly articulated policy about the use of alcohol and other drugs in the workplace will let the community know that we will not tolerate alcohol and other drug abuse. This message can be especially relevant in supporting alcohol and other drug abuse prevention programs directed at adolescents in school and older teenagers about to enter the workforce. We want to get the message out that if you want to work in Oregon you better be drug-free. To do this, we must help small businesses develop drug free workplace strategies. We must help them prepare for the challenge.

Let me close by suggesting some options on how you can help.

1. Someone, somewhere at the federal level should inventory Chamber of Commerce, trade associations and small businesses to collect innovative approaches taken by small business to create drug free workplaces and communities.

2. Let's survey small business owners and find out what they think they need to protect their business and employees.

3. I would suggest that NIDA, DOL and SBA get together and develop guidelines for a Small Business/Drug Free Workplace Program Block Grant modeled after a very successful and very small Block Grant created in 1988 called the Community Youth Activity Program Block Grant. Very creative and effective prevention efforts have occurred through the CYAP.

I would suggest that $100,000 per state be included with a mandate that the single state agencies for alcohol and drug abuse work with their local small business associations, trade unions, EAPA chapters, Chambers of Commerce, etc., to find creative ways of working with businesses of 300 employers or less to develop drug free workplaces with no money for administration--that we study the successes and let others replicate good programs.

Mr Chairperson, I have appreciated this opportunity. I stand ready to help in any way I am able. Thank you.

3-7-91

Attachment 1

The problem . . . . .

- 10-23% of U.S. workers use dangerous drugs
- 2.2 times more early dismissal or time off
- 2.5 times more absences of 8 days or more
- 3 times more likely to be late to work
- 3.6 times more injuries in workplace
- 5 times more off-the-job accidens
- 5 times more workers' compensation claims
- 1/3 less productive
- Families incur 300% higher medical costs
- Alcoholics have 8 times the medical costs of other workers until treatment occurs

Attachment 2

FIGHTBACK AGAINST DRUGS
OREGON BUSINESS COUNCIL

1. Policy. Set in writing a policy on the use of illegal drugs. The policy should prohibit employees from using, selling, possessing or being under the influence of illegal drugs on company premises or during work time.

2. Sanctions. State as part of the policy that any violation will result in immediate disciplinary action, which may include termination.

3. Pre-employment testing. Require applicants for employment to take and successfully pass a pre-employment screening test for illegal drugs as condition of employment.

4. Testing for reasonable cause. Conduct screening tests for illegal drugs upon reasonable suspicion that a current employee is under the influence of illegal drugs or is involved in a lost-time accident.

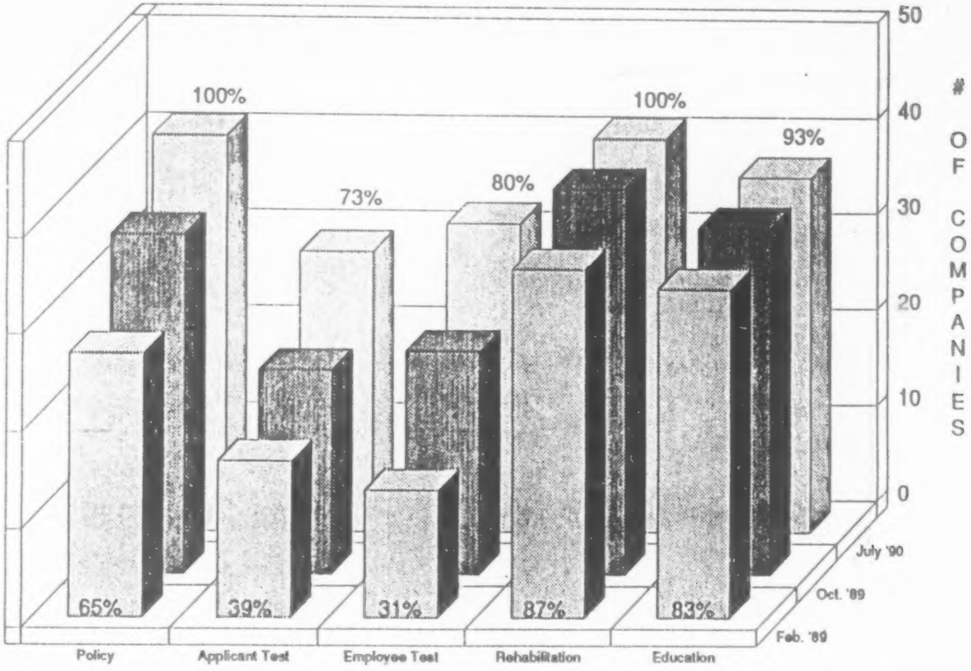
5. Employee assistance programs. Provide the opportunity for rehabilitation to employees using illegal drugs, either by confidential counseling through an employee assistance program or through a company-approved treatment facility. Encourage employees and employees' families to seek assistance.

6. Education. Establish education programs for employees and employees' families on the danger of drug abuse, the company's policy on the use of illegal drugs, and the rehabilitation opportunities provided by the company.

Attachment 3

Fightback Against Drugs

Implementation Among OBC Members



Attachment 4

Oregon Small Business/Employee Assistance Program Initiative

1. Appoint statewide OSB/EAP steering committee and advisory board to oversee project.

2. Utilize drug-free workplace campaign developed by Marx/Knoll, Denight and Dodge (Regional Drug Initiative) in other parts of Oregon.

3. Survey small businesses to determine:
   - current level of drug-free workplace policy,
   - access to employee assistance programs, and
   - efforts to develop drug-free norms in the community.

4. Develop and disseminate materials regarding what small businesses can do to reduce alcohol and other drug problems.

5. Fund up to 10 demonstration grants to help local business:
   - develop drug-free policy,
   - reinforce drug-free norms in the community, and
   - develop access to employee assistance program consortium.

6. Re-survey to evaluate effort and determine whether objectives have been met.

Attachment 5

Oregon Small Business/Employee Assistance Program (OSB/EAP) Initiative

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January 7, 1991

TESTIMONY

MARCH 8, 1991
CONGRESSIONAL HEARING ON SUBSTANCE ABUSE IN THE WORKPLACE

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United States House of Representatives Committee on
Small Business
Subcommittee on Regulation, Business Opportunities and Energy
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On behalf of Governor Mario M. Cuomo, I appreciate this opportunity to offer comment on the federal drug free workplace program and to share New York State's initiatives to assist small business in constructively dealing with alcohol and other drugs on the job.

ALCOHOL AND THE WAR ON DRUGS

As Director of the Division of Alcoholism and Alcohol Abuse, I am responsible for the planning, delivery and financing of a broad system of alcoholism prevention, intervention and treatment services in the Empire State. My agency and the alcoholism field in New York are guided by a new and important initiative, Governor Cuomo's Anti-Drug Abuse Council which is made up of the Commissioners of eight state agencies, and is chaired by Lieutenant Governor Stan Lundine. The Council's recent report to the Governor described the world of work as a key component of the state's alcohol and drug abuse prevention strategy.[1] From the start, Governor Cuomo made the decision to include alcohol in New York State's War on Drugs. This inclusion of alcohol abuse and alcoholism within our anti-drug abuse program is strikingly different from the approach taken by the federal War on Drugs. I will be pleased in my remarks to touch on the rationale and results of our strategy, how it differs from the federal program and how this difference carries over to businesses, especially smaller ones.

The focus of the federal program, expressed in the law that established the Office of National Drug Control Policy, is on illegal drugs/controlled substances. Along with many other professionals in the alcoholism and other drug abuse field, I believe that this narrow focus dramatically limits the effectiveness of the federal program. By every account, alcohol is the major drug used and abused in the workplace and throughout society. The recently released 1990 National Household Survey on Drug Abuse conducted by the U.S. Department of Health and Human Services found the following regarding regular use of substances (that is, at least once a month):

For young adults (aged 18-25)

- two percent use cocaine
- thirteen percent use marijuana
- 63 percent use alcohol.

Among older adults (those above age 26):

- six-tenths of one percent use cocaine
- 3.6 percent use marijuana
- 52 percent use alcohol.

In other words, while two thirds of young adults drink alcohol, only 15 percent regularly use any illegal drugs (most marijuana). And for those over 26, where the great bulk of the workforce is, less than five percent regularly use any illegal drugs, and over half regularly use alcohol.[2]

If one recognizes, as we do, that alcohol is the norm-setting drug, and the one that precedes, accompanies and very often continues after illicit drug use has ended, the future does not look terribly bright. Considering that alcohol is a "gateway drug" to other drug use, and is indeed "illegal" for individuals under the age of 21, the implications are enormous with respect to the narrower prevention initiatives that are promoted and supported by current federal initiatives.

New York State, through the Anti-Drug Abuse Council, has included alcohol in its war on drugs. This decision to include alcohol in its efforts was made with full acknowledgement that it is legal, and is one on which many New Yorkers rely on for their livelihood. Alcohol is a drug, the number one drug of use and abuse in my state and in the country. In terms of lifetime prevalence, there are twice as many adult New Yorkers with an alcohol disorder than with a drug disorder, based on rates of alcohol and drug disorders reported in the Journal of the American Medical Association from a national study using data from the National Institute of Mental Health Epidemiologic Catchment Area (ECA) Program.[3] We recognize that alcohol is addicting, damaging to health, heavily involved in crime and violence, and economically draining to our businesses. To exclude alcohol from the overall war on drugs we feel, would be irresponsible.

THE DRUG FREE WORKPLACE AND ALCOHOL

Let us now move to the workplace. Businesses are in the business of doing business. For the most part, they are not familiar with the technicalities of drug abuse, and thus rely on us, the experts, to inform them of the nature of the problem and what they can do about it. Their primary concern with alcohol or other drugs is the impact on the performance and productivity of their employees.

The federal drug free workplace program has been comprehensive and well financed. It has gotten everyone's attention and has certainly increased awareness of the problem of drugs at work. Regrettably, from President Reagan's Executive Order of September 15, 1986, to the Drug Free Workplace Act of 1988, to the five component model drug free workplace program, to model state drug free workplace acts, media advertising, and regulations for employers licensed by the nuclear regulatory commission and those in the defense and transportation industries, the mandated or recommended approach is limited to illegal drug use. This is clearly unfortunate for the untold numbers of workers across the country with an alcohol problem, but is also simply bad for business.

Small business people understand the importance of maintaining their capital assets. Addressing illegal drugs without also considering workers with an alcohol problem is like routinely checking the brakes on the company's delivery truck, but never bothering to change the oil. The truck will stop fine, but will reach a point where it will no longer start. Companies appreciate the value of preventive maintenance, and want to know the full range of problems they need to address when it comes to their most important asset, their employees.

If we advise and assist small business in dealing with only a piece of the problem, and the smaller piece at that, then we are doing a serious disservice to them. We are misleading them, and are not helping them to maintain a healthy and competitive business. Under the federal drug free workplace program, small businesses are not informed that the most commonly used, abused and the most costly drug to American business is alcohol.

Dr. Beny Primm, Associate Administrator of the Office of Treatment Improvement at the Alcohol, Drug Abuse and Mental Health Administration, and an experienced and respected colleague from New York State, reported recently at the Conference of the National Institute on Drug Abuse that each day, the number of deaths attributable to drug abuse is 15 to 30 persons, as compared with 350 people who die daily from the effects of alcohol. Several surveys indicate that both employees and employers consider alcohol to be the drug with the greatest negative impact in the work world. Alcohol is legal; it is generally accepted in our country; it is consumed by most Americans, and tragically alcohol is still viewed by many as the benign or less serious drug. But businesses, large and small, are paying a heavy price. In New York State alone, based on the latest federal information, the work related costs associated with alcohol abuse in New York State is over 2 billion dollars each year.[4] This is 61% of the state's total losses due to alcoholism and alcohol abuse, and is four and a half times greater than the cost of other drug abuse in the work world.[5]

Who are these workers whose alcohol abuse results in such a massive drain on our businesses? They are family members, frequently long term workers on the assembly line or behind the reception desk. They include the CEO of a small printing firm, or the general manager of a local retail carpeting outfit. Most people with an alcohol problem are still employed. Significantly, New York State's alcoholism research facility, The Research Institute on Alcoholism in Buffalo found that heavy drinking among upper income persons is 24%, which is more than double the rate of those in lower income brackets.[6] This finding was complemented by a major study of white collar employees which found rates of alcohol abuse much higher than previously estimated. The study, reported in the October 1990 issue of the Journal of Occupational Medicine was co-authored by Dr. Howard T. Blane, Director of our Research Institute, and found that alcohol abuse among white collar workers was nearly 4 times the rate previously estimated for men, and double the rate estimated for women.[7]

Illegal drug use is declining. The National Household Survey documents how illegal drug use has been cut roughly in half in the past decade. Alcohol use has declined slightly, but remains many times higher than drug use.

Thus, the national strategy for a "drug-free workplace" is not an approach which any business executive would recommend. It expends precious resources in the least productive area, and makes the expense inevitably much greater by delaying attention to the real problem.

The "alcohol connection" to illnesses, injuries and poor productivity amount to an enormous hidden tax on employers. Because progressive companies value their investment in their workers, they have long realized the value of Employee Assistance Programs (EAPs) which assist their workers in getting help around alcohol and other drug abuse, and a range of other problems which impact on job productivity.

It is the philosophy of New York State that the war on drugs at the workplace must recognize all substances that interfere with effective, efficient and safe on-the-job functioning, rather than focus only on illegal substances. Therefore, our approach includes addressing problems associated with alcohol use and abuse, as well as with other drug use through programs that provide identification, intervention, assessment, referral and follow up of employees in need of assistance. We promote the formulation of clear-cut policies and procedures regarding acceptable conduct at the workplace, and the consequences for those who do not comply with them. At the same time, we recognize the value of employees, and promote the availability of treatment as a means of offering the opportunity for employees to obtain needed help.

When furnishing technical assistance to businesses in complying with the federal Drug Free Workplace Act, we advise that they fold alcohol into their efforts, even though it is not required by the Act. In fact the Drug Free Workplace program for the 250,000 state employees of New York includes both alcohol and other drugs.

EMPLOYEE ASSISTANCE PROGRAMS

The Workplace Policy Research Branch of the National Institute on Drug Abuse appears to be changing its emphasis from a "detect and punish" focus to a more rehabilitative approach. NIDA experts indicated at their recent conference, that the key to a successful drug free workplace is the employer's "helping hand" or offer of assistance. This is a dramatic and welcome change. Federal officials seem to now appreciate that the attention they drew to drug testing as the quick and easy way of handling drugs at work, will have limited results. Drug testing, in and of itself has the potential to drive drug using employees underground. What is worse for small business, drug testing at large corporations may motivate alcohol and drug abusing employees to relocate to these smaller companies, since most have not yet developed a program. Businesses are not law enforcement or detective agencies; their interest is in the bottom line and they know the value of their workforce in running a competitive operation. It is gratifying to see the federal program's new emphasis on EAP which takes a more rehabilitative approach, while serving as a resource for business.

Good EAP combines elements of prevention and early intervention. Good EAP identifies problems early and refers workers to a less intensive and less costly level of care. This increased appreciation of the value of EAP is especially relevant given the January 9th report of the Health Care Financing Administration (HFCA) which indicated that health care spending by U.S. businesses rose 12% between 1989 and 1990.[8]

In New York State, EAP is regarded by Governor Cuomo's Anti-Drug Abuse Council as the cornerstone in the promotion of a drug free workplace.[9] Starting as occupational alcoholism programs as early as the 1940's at several large New York businesses, including Eastman Kodak Company, Consolidated Edison, the New York Port Authority and the New York Times, EAP now deals with a range of health and behavior problems of New York's workers. Quality EAPs are cost effective, confidential resources which assist working people with problems that interfere with their ability to perform on the job. This strategy offers the "helping hand" to the alcohol or drug dependent employee, but is also a reliable resource for the companies themselves, giving them a constructive way of dealing with workers with a variety of serious personal difficulties. Governor Cuomo noted that EAPs "benefit the employee, the employer and the public as well" in his Proclamation designating November 1990 as Employee Assistance Program Recognition Month. EAPs are being developed and continued, even in these recessionary times, because businesses have found they work. They help reduce losses due to absenteeism, lowered performance, misuse of health benefits and on-the-job accidents. For example, a recent study by the McDonnell Douglas Corporation found that employees referred by their EAP to alcohol or other drug treatment missed 44% fewer work days, had 81% lower attritions and filed an average of $7,300 less in health care claims than those employees who sought treatment on their own.[10]

NEW YORK STATE'S PROGRAM FOR SMALL BUSINESS

The Division of Alcoholism and Alcohol Abuse has promoted and assisted in the development of EAPs in the private and public sector, and by labor organizations, since 1972. We have learned much and have benefited from the experiences of companies, unions and EAP professionals who make it work. One important reality we have faced is that all EAPs are not the same, and many programs do not contain the elements and approaches that best reach workers who have alcohol or other drug problems. To help Employee Assistance professionals and work organizations in conducting the most effective services, new program guidelines were developed by our agency in 1989 with valuable input from the EAP field.[11] Our work in New York State on the definition of EAP has carried over to the national Employee Assistance Professional Association (EAPA) where we are pleased to be represented on their Program Standards Committee. This professional organization has advanced the development of EAP across the country and in Canada and Europe. EAPA also promotes quality programming through its system for certifying professionals in the EAP field.

The flagship of our current EAP effort is the state's EAP law, signed by Governor Cuomo in 1988.[12] This law calls for the Division to establish EAP consortia for small businesses (less than 750 employees) and other work organizations that have had difficulty in developing these programs. There are 414,000 small and medium sized businesses in New York State.The timing for the law, introduced by State Assemblyman John Brian Murtaugh, a long time supporter of EAP and State Senator Frank Padavan, could not have been better. We recently completed a comprehensive survey in New York State which indicated that while most employees of larger work organizations (7 in every 10) have access to an EAP, less than one in a 100 employees of smaller organizations have such coverage.[13]

Our EAP consortia initiative funds 19 projects across the state to serve small and medium sized organizations. These programs target small businesses, with others providing EAP to small human service agencies, small school districts and even smaller police agencies. The bulk of these organizations employ high numbers of females and minorities. Supported by a $500,000 appropriation, projects are funded on a declining scale for four years, after which time they are expected to be self-supporting. In the first nine months of consortia operations, the 19 projects extended EAP access to over 37,000 individuals who are employed by 308 different work organizations. We are also pleased that this initiative seems effective in reaching women who accounted for over 50% of the referrals. It is significant that a third of the employees seeking help from the consortia EAPs were referred for alcoholism or other drug abuse treatment. This program is proving effective in bringing an alcohol and drug free workplace to small work organizations.

To get the word out to small businesses, an EAP Media Campaign was initiated last fall to furnish informational materials, and even limited paid advertising in consortia communities. The campaign included television and radio PSAs, print ads, billboard and transit ads, posters, bumper stickers, EAP buttons and two new brochures. Samples are included with you copy of my written testimony. A toll free information line, 1-800-EAP-6433, provides packets of information on the drug free workplace and EAP to interested local businesses. New York State also benefits from strong and active support of EAP by such statewide organizations as the New York State AFL-CIO and the Business Council of New York State, Inc.

In addition to the funded consortia, the EAP provider network in New York State, made up of both non-profit and for-profit enterprises, has been growing and evolving. These providers are the backbone of EAP services to smaller businesses. They have also been very generous as a partner in many of our plans and activities. Many of these providers have openly informed us, however, that they no longer aggressively market to small business, since the financial return is so small.

We are looking to the EAP consortia initiative, as a demonstration program, to provide new information on ways of reaching and assisting smaller businesses and the four and a half million New Yorkers who work for them.

CONCLUSION

In closing, I would like to review for your consideration a number of suggestions around the federal drug strategy, as it relates to small businesses. The drug free workplace law, the federal regulations and other initiatives are a start. At this point we all need to listen to each other, to gain from the experiences, the success and failures of businesses, EAP professionals and others. We need to be open to modify our approaches, and when necessary, our whole focus. For this, I strongly commend the subcommittee for holding this important hearing and hope my earlier comments on the federal program are of some value to you. I would like to also congratulate NIDA for changing its emphasis on drug testing.

To recap:

- Any effort to assist small business in addressing the devastating personal and financial costs of drug abuse in the world of work must focus on alcohol, along with other drugs.
- Companies from across the country who have sought the least expensive and most effective response to alcohol and other drugs on the job are telling us that EAP works. Make clearly defined EAP the focal point of the federal drug free workplace initiative.
- In any public education efforts on alcohol and other drugs at work, put your focus on small business. Most larger companies in the country already have some form of program in operation. Talk the language of the small business; involve them in your planning, along with various professional associations that tie small businesses together.
- Finally, help to get the ball moving in selected communities across the country by providing seed funding for small business EAP consortia, rather than supporting single organizations as was the focus of the Department of Labor EAP grant program. Consortia projects will reach so many more organizations in the long run. Where appropriate, use those state authorities that are active in the drug free workplace to work with local chambers of commerce and business associations.
- The EAP and drug free workplace effort in New York State is the result of the initial financing of two occupational program consultants by the National Institute on Alcohol Abuse and Alcoholism in 1972. From that small beginning has grown a network of EAP providers, EAP development by most larger companies and our new emphasis on small business.

Thank you again for allowing me to share New York State's perspective and activities, and I sincerely wish you the best in your consideration of a federal drug free workplace program and its impact on small businesses. I would like to offer the availability of my agency's Bureau of Workplace and Institutional Intervention Services, if we can be of any assistance to the subcommittee around alcohol and drug free workplace alternatives for small business.

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6. Alcohol Use and Abuse Among Adults in New York State, New York State Division of Alcoholism and Alcohol Abuse, Research Institute on Alcoholism, 1988.

7. Journal of Occupational Medicine, October, 1990.

8. Health Care Financing Administration, January, 1991.

9. State of New York Anti-Drug Abuse Strategy Report, November, 1989.

10. Employee Assistance Program Financial Offset Study, McDonnell Douglas Corporation, August, 1989.

11. Five-Year Comprehensive Plan for Alcoholism Services in New York State, 1990 Update, New York State Division of Alcoholism and Alcohol Abuse, December, 1989.

12. Chapter 449 of the Laws of 1988 (New York State Laws).

13. Extending the Alcohol and Drug Free Workplace to Smaller Work Organizations, A Report on the Inventory of Employee Assistance Programs in New York State, New York State Division of Alcoholism and Alcohol Abuse, November, 1990.

CHAPTER 449

AN ACT relating to the division of alcoholism and alcohol abuse in funding employee assistance programs

Became a law August 1, 1988, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The division of alcoholism and alcohol abuse shall hereby provide assistance to employee assistance programs.

§ 2. (a) For purposes of this act the following terms shall have the following meanings:

1. "Employee assistance program" is a program serving employee units for the purpose of identification, motivation to treatment, referral and follow-up of employees and for family members of employees when alcoholism, alcohol abuse, substance abuse, chemical dependency, emotional, marital and other behavioral/health problems result in the inability to function satisfactorily on the job.

2. "Employee unit" means an employer with less than seven hundred fifty employees, or a labor organization, or a professional organization or a community organization which applies for financial aid.

3. "Consortium" means a not-for-profit corporation which provides employee assistance program services to two or more employee units.

(b) The division of alcoholism and alcohol abuse shall in consultation with the division of substance abuse services establish guidelines through the promulgation of rules for the purpose of establishing such employee assistance program consortiums. Such guidelines shall include, but not be limited to, the following:

1. Establishment of an advisory board, which shall work in consultation with the division of alcoholism and alcohol abuse's advisory council on alcoholism and whose membership shall include, but not be limited to, individuals from the occupational programs professions and representatives of small businesses and unions, and whose duties shall include, but not be limited to, recommendation of criteria for funding and methods of determining program accountability; and

2. Procedures for approval of funding for a program including, but not limited to, elements necessary for the development and implementation of, and qualifications necessary for the staffing of, employee assistance program services; and

3. Criteria for the confidentiality and maintenance of records.

(c) 1. An employee assistance program consortium in conformance with the guidelines of the division of alcoholism and alcohol abuse shall be eligible for financial aid within appropriations made therefor.

2. Such financial aid shall be distributed according to division of alcoholism and alcohol abuse guidelines and shall not exceed seventy percent of the non-capital expenditures of the program's first year of operation for such year, fifty percent of such expenditures for the program's second year of operation, forty percent of such expenditures for the program's third year of operation and thirty percent of such expenditures for the fourth year of operation. No program shall receive financial aid under this act after completion of the fourth year of operation.

§ 3. The director of the division of alcoholism and alcohol abuse shall submit a status report on the progress of the program to the director of the division of the budget and the respective chairs of the senate finance committee and the assembly ways and means committee no later than January first, nineteen hundred ninety, and each year thereafter, with a final report due January first, nineteen hundred ninety-three.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall remain in full force and effect until the thirty-first day of March, nineteen hundred ninety-three, provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date.

State of New York

Executive Chamber

As described in the report of the Governor's Statewide Anti-Drug Abuse Council (ADAC), Employee Assistance Programs (EAPs) are a "key component of our alcohol and drug abuse prevention strategy."

The workplace presents an excellent opportunity for the early identification of individuals with alcohol or other drug abuse problems and the provision of appropriate treatment services. As ADAC noted, such arrangements benefit the employee, the employer and the public as well.

About one worker in ten has an alcohol or other drug problem, and such impaired employees have higher rates of absenteeism, disciplinary cases, illnesses, injuries and health care expenses. But by providing a caring and confidential intervention, EAPs are a proven resource in helping workers to receive appropriate treatment and return to the job as normal, productive employees. One worker in four now has access to an EAP.

In order to expand these services and improve the health and safety of the state's workforce, New York State has a long history of promoting EAPs for public and private workers. The statewide EAP already covers some 200,000 state workers. In 1989, the Division of Alcoholism and Alcohol Abuse (DAAA) began the state's innovative program to award Demonstration Grants to develop EAPs for small work organizations, which were traditionally unserved.

Because of the current campaign to establish a "drug free workplace," we have increased our efforts to foster EAPs through a multi-media educational campaign developed by DAAA, under the slogans, "It's as Easy as EAP" and "EAPs Work at Work."

Along with homes, communities and schools, workplaces are one of the four major areas to focus our efforts to reduce and prevent problems caused by alcohol or other drugs. As New York competes in the global economy, we must do everything possible to increase the quality of goods and services by improving health and safety in the workplace.

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, do hereby proclaim November, 1990, as

EMPLOYEE ASSISTANCE PROGRAM RECOGNITION MONTH

in New York State, in order to implement the state's balanced, comprehensive strategy against alcohol and other drug abuse.

GIVEN under my hand and the Privy
Seal of the State at the Capitol in
the City of Albany this eighteenth
day of October in the year one
thousand nine hundred and ninety.

Mario M. Cuomo

BY THE GOVERNOR:

Secretary to the Governor

PUBLIC POLICY

New York State Administration Promotes EAPs

GOVERNOR MARIO CUOMO NAMES NOVEMBER 1989 AS EAP MONTH IN NEW YORK STATE...

Government can at times be characterized as moving with all the abandon of a snail up an incline. This has appeared to be the case with the EAP month resolution introduced in the U.S. House of Representatives by Rep. Louise Slaughter. At last count, there were 83 cosponsors for a proposal that had most of 1989 to move through Congress.

At other times, government moves swiftly and decisively. New York State is a case in point. A proclamation to accomplish the same end as Rep. Slaughter's resolution—at least on a statewide basis—was drafted. Only the means of enacting it were different. On October 25, Governor Mario Cuomo proclaimed November as "Employee Assistance Program Recognition Month" in New York without passage of legislation to that effect.

On November 10, Marguerite T. Saunders, director of the Division of Alcoholism and Alcohol Abuse, lauded EAPs in a "Dear Colleague" letter that was circulated to employers throughout the state to announce Governor Cuomo's proclamation. "This acceptance of the value of EAPs would never have been possible except for the commitment of the thousands of individuals within work organizations and EAP services who are establishing and operating appropriate EAPs through New York State. I want to thank you for your dedication to helping the many employed people and their families who are being given the assistance they desperately need," the letter states. The following is a text of the proclamation.

STATE OF NEW YORK
EXECUTIVE CHAMBER

When workers are impaired by alcohol or other drug abuse, it disrupts their careers, damages family life and causes a significant loss to New York State's economy.

One worker in ten has a substance abuse problem, and impaired workers have much higher rates of absenteeism, illnesses and injuries, accidents and sick claims, and disciplinary problems. The problem erodes one of our most important assets, a qualified and experienced workforce, and also reduces our competitiveness through a poorer quality of goods and services, as well as threats to public health and safety. Overall, it is estimated that of the total cost to the state's economy of alcohol and drug abuse, nearly 60 percent occurs in the workplace.

However, Employee Assistance Programs (EAPs) are a proven and confidential resource to help workers with substance abuse or other serious problems that interfere with their ability to function on the job safely, efficiently and effectively. Because denial is a core part of anyone's substance abuse problem, some form of caring intervention is needed to help motivate and refer persons for help. Experience shows that early intervention through the job is one of the most effective forms of treatment. Such care also pays for itself within a few years through reduced accident and sick claims and substantially improved performance by the recovering employee.

EAPs and their predecessors, Occupational Alcoholism Programs, have operated successfully in New York State for more than 40 years. But because only one worker in four has access to an EAP, we must strengthen the efforts by state and local governments, businesses, organized labor and professional groups to expand EAP coverage. This year, the Division of Alcoholism and Alcohol Abuse has issued guidelines on how to establish comprehensive, effective EAPs and has begun a program to encourage EAPs through consortia for small work organizations.

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, do hereby proclaim November, 1989, as

EMPLOYEE ASSISTANCE PROGRAM RECOGNITION MONTH

in New York State, in order to promote health and safety for workers, and to strengthen the state's economy.

GIVEN under my hand and the Privy Seal of the State at the Capitol in the City of Albany this twenty-fifth day of October in the year one thousand nine hundred and eighty-nine

Mario M. Cuomo

...AND ISSUES $500,000 IN GRANTS FOR EAP CONSORTIUM DEVELOPMENT

Fortunately, New York is using more than rhetoric alone to promote EAPs. As the U.S. Department of Labor was approving grant applications for its well-publicized $1.5 million EAP development program which applies to the entire country, NYS's Division of Alcoholism and Alcohol Abuse (DAAA) was accepting applications for its own EAP Consortia Program. It is allocating $500,000 to 20 organizations for EAP development throughout the state. The Program's stated goal is to "offer financial support for EAP Consortium services aimed at underserved work organizations such as small businesses (less than 750 employees), labor organizations, and professional organizations."

Assemblymen Brian Murtaugh, who chairs the Assembly's Alcohol and Drug Abuse Committee, is given primary credit for the program's passage into law. He recently told the *Exchange*, "I am delighted that the NYS legislature passed a bill that will enable many businesses to provide EAP services for employees who otherwise would not have access to this service."

According to Dan Forget, assistant director of DAAA, a wide variety of organizations submitted grant proposals under the program. "We got applicants that included groups of townships, human services organizations that will contract with providers, central labor councils, and even a local police EAP consortium," he says. The grant money is on a matching basis, such that a DAAA grant award will not exceed 70% of the expenditure the first year, 50% the second year, 40% the third year, and 30% the fourth year. In 1990, the total EAP investment attributable to the Consortia Project will be $929,000, including the $500,000 from DAAA. Funding is expected in subsequent years, but will be subject to separate appropriations.

The Consortia Project was established under the state's first EAP law, which bears the boilerplate title of Chapter 449 of the Laws of 1988. Fiscal monitoring and programmatic monitoring of the grant recipients will be performed by DAAA. The following is a list of the grant recipients.

GRANT RECIPIENTS (consortium type target population)

1) Construction Exchange of Buffalo & Western New York (small business association consortium)
2) Oswego County COA & Substance Abuse (small business consortium)
3) Onondaga-Cortland-Madison BOCES (school district consortium)
4) United Health Services (community organizations consortium)
5) Mohawk Valley Council on Alcoholism (United Way agencies consortium)
6) Town of Southampton (municipality consortium)
7) Chamber of Commerce of Nyack, Inc. (small business, c/o Chamber)
8) Student Assistance Services (residential child care agency consortium)
9) Family Services of Chemung County, Inc. (small business manufacturing and service organizations)
10) Pius XII Youth & Family Services (chamber of commerce consortium)
11) The Greater Rochester Metro Chamber of Commerce (chamber of commerce consortium)
12) American Federation of Teachers Local 3382 (organized labor consortium)
13) Local 580 Apprentice-Journeyman Education Fund (organized labor consortium)
14) Methodist Hospital of Brooklyn (small business consortium)
15) St. Francis Hospital Workplace EAP (chamber of commerce & education services consortium)
16) International Association of Bridge, Construction & Orn. Iron. Local Union #12 & Eastern Contractors Assoc. Inc. (union & contractors association consortium)
17) Schuyler-Chemung-Tioga BOCES (school district consortium)
18) Genessee Council on Alcoholism & Substance Abuse (chamber of commerce consortium)
19) Central New York Services Inc. (law enforcement agencies consortium)
20) The Health Association of Rochester and Monroe County EAP (community organization consortium)

SOLUTION:
EAPs
WORK AT WORK

An EAP provides a safe, non-threatening resource for:

Employers

Employees

Family members, and

Union Representatives

to begin to find solutions to those problems that affect job performance.

In a recent Alexander & Alexander Co. study, employees who had alcohol and other drug problems and were referred by their EAP, missed 44 percent fewer company days and filed $7,300 less in health care claims than those who sought treatment on their own.

With the various EAP models, a program can be implemented **inexpensively** and will in the end **save money** for the organization, **regardless of its size**. An EAP provides a framework from which to develop procedures and policies consistent with maintaining a productive, quality workforce.

An EAP is an investment
in our most valuable asset –

Our Workers.

There is a network of EAP providers in New York State which can assist **small and large employers and labor organizations** in implementing a cost-effective EAP.

For more information on EAPs and local providers who can help you deal with alcohol and other drug problems on the job, contact the EAP Consultant of the New York State Division of Alcoholism and Alcohol Abuse nearest you:

- Upstate EAP Consultant
  716 James Street
  Syracuse, NY 13202-2080
  Phone: (315) 428-3210
- Downstate EAP Consultant
  270 Broadway - Room 410
  New York, NY 10007
  Phone: (212) 417-4943
- Workplace & Institutional
  Intervention Services
  194 Washington Avenue
  Albany, NY 12210
  Phone: (518) 474-6422

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Mario M. Cuomo, Governor

Marguerite T. Saunders, Directo

The New York State Division of
Alcoholism and Alcohol Abuse

PROBLEMS
HAVE SOLUTIONS

FAMILY
DRUGS

IT'S AS EASY AS
EAP
EMPLOYEE
ASSISTANCE
PROGRAM

PROBLEMS: AT WORK AND HOME

Personal problems, which may include emotional, family, psychological, marital, legal, alcohol or other drug abuse strike everywhere: work, home, school, church...

- For small or large work organizations, serious personal problems often result in:
  - deteriorating job performance;
  - poor relationships with the company and family;
  - frequent absences;
  - lateness;
  - increased use of sick time;
  - misuse of health insurance benefits;
  - higher turnover and training costs, and
  - serious safety risks to self and to workers.
- Alcohol and other drug abuse cost New York's businesses $10.4 billion annually in workplace losses.
- 1.4 million New Yorkers are victims of alcoholism alone and another 5 million family members are adversely impacted. The physical, financial and emotional strains are often overwhelming.
- Over 50 percent of addicted people are workers.
- In a state where there are 8 million employed people, only one in four have access to a workplace-based program that provides assistance with personal problems through Employee Assistance Programs.

EMPLOYEE ASSISTANCE PROGRAMS

For Organizations – Small or Large

The Employee Assistance Program (EAP) is a cost-effective, confidential resource for employees which assists working people with problems that interfere with their ability to perform on the job effectively, efficiently and safely. An integral part of the work organization itself, the EAP is designed to:

- help employees and family members with alcoholism, substance abuse, emotional, marital, family and other personal problems that affect job performance.
- identify and motivate to treatment employees with serious problems, referring them to the appropriate community resource and offering follow-up during and after treatment.

HOW EAPs HELP BUSINESS

Employees with serious personal problems will not perform their job responsibilities at the expected level. This causes measurable as well as hidden costs to the company whether it employs 2,000 or 20 people. An EAP reduces costs:

- Improves quality of work.
- Reduces inappropriate use of health care benefits by addressing the main problem as opposed to those that "mask" the problem.
- Demonstrates that business cares about the whole employee.
- Decreases the likelihood of accidents on the job.
- Reduces absenteeism on and off the job.
- Maintains valuable employees.
- Saves costs associated with termination, job search, and retraining.
- Provides protection to employers against lawsuits stemming from unlawful dismissal on the basis of disability.
- Increases the amount of time supervisors spend attending to their jobs and helps them do their jobs better.
- Improves the morale of all workers.

HOW EAPs HELP LABOR

Union members with problems that affect their job performance need help. Without help these difficulties will eventually create conflict with their family and co-workers and the union. An EAP can help unions deal constructively with these problems in many ways:

- Saves the union money and time on grievances, arbitrations and health care costs.
- Insures a safe, healthy and a more productive workplace for all members.
- Restores productivity and increases job security.
- Strengthens the union by motivating members to accept help.
- Extends the labor movement's traditional role of helping workers with problems in the workplace.
- Makes available additional money for negotiated salary increases.

The Solution – –

EVERYONE WINS

EAPs can help keep the workplace safe and productive, and help employees who may have alcohol or other drug problems that affect their performance.

Employee • Cost Effective
Assistance = • Confidential
Programs • Early Intervention

66 percent drop in absenteeism for workers after receiving help.

86 percent decline in alcoholics' monthly average health care costs after receiving treatment.

A recent survey of 50 companies showed that EAPs were responsible for substantial cost reductions, including:

- Declines of 33 percent in use of sickness benefits.
- Declines of 65 percent in work-related accidents.
- Declines of 39 percent in workers' compensation claims.
- Declines of 74 percent in time spent on supervisor reprimands.

EAPS WORK FOR BOTH SMALL AND LARGE COMPANIES and in fact are a valuable asset especially for small businesses, where staff turnover can cause overwhelming problems. EAPs reduce the likelihood of this turnover due to personal problems.

EAPs comply with federal laws and regulations. They are the best solution, not only for alcohol and other drug problems, but also for a range of personal problems that can interfere with job performance.

EAPs
WORK AT WORK

For more information on EAPs and local providers who can help you deal with alcohol and other drug problems on the job, contact the EAP Consultant nearest you:

- Upstate EAP Consultant
  716 James Street
  Syracuse, NY 13202-2080
  Phone: (315) 428-3210
- Downstate EAP Consultant
  270 Broadway - Room #410
  New York, NY 10007
  Phone: (212) 417-4943
- Workplace & Institutional Intervention Services
  194 Washington Avenue
  Albany, NY 12210
  Phone: (518) 474-6422

For more information and educational materials on alcohol and other drugs, contact:

- Your local Council on Alcoholism listed in the Yellow Pages
- N.Y.S. Division of Substance Abuse Services
  Executive Park South
  Stuyvesant Plaza
  Albany, NY 12203
  Phone: (518) 457-4176

* * * *

Mario M. Cuomo, Governor

Marguerite T. Saunders, Director

The New York State Division of Alcoholism and Alcohol Abuse

CREATING
A
DRUG-FREE
WORKPLACE

ALCOHOL AND OTHER DRUGS IN THE WORKPLACE

Drug abuse at the workplace is a growing concern to employers and employees at both national and state levels. In fact, the "war on drugs" has become a popular slogan.

In response to this concern, the Federal Government passed the Drug-Free Workplace Act of 1988. This established special regulations for certain industries and individuals in "safety sensitive" positions. Most organizations, especially those that are smaller, in the Empire State do NOT have to comply with the act. However, like you, they are concerned about alcohol and drug abuse at the work site. This has forced employers and unions who are NOT experts in the area of drug abuse to search out the best, yet least expensive, solution to combatting the problem of drug and alcohol abuse at the work site.

It can become confusing for employers and unions:

1. **Should we implement drug testing?**
2. **What drugs do we look/test for?**
3. **What happens to an individual who tests positive?**
4. **Do we rehabilitate or fire?**

While this growing concern seems to emphasize illicit substances, alcohol remains the most widely abused and the most costly drug. Alcohol, known as the "GATEWAY" drug, often leads individuals to other drug use.

Some believe that a simple detect-and-fire approach should be used to win the "War on Drugs" at the workplace. This only drives the problem underground. Well meaning cover up by fellow workers, and even supervisors and shop stewards allows the hidden problem to continue, and to get much worse.

Consider an alternative: The Employee Assistance Program (EAP). EAP is a constructive, rehabilitative and proven response to alcoholism, other drug abuse and other serious personal problems in the workplace. An EAP is a cost-effective, confidential resource for employers, unions and employees which assists working people with problems that interfere with their ability to perform on the job effectively, efficiently and safely.

THE PROBLEM --

EVERYONE PAYS

The costs of alcohol and other drug use or abuse can be measured in many ways – not just in dollars to the work organization. Employees who are abusing alcohol or other drugs are more likely to have accidents than are their co-workers. Performance drops, resulting in lower productivity and poor morale. Health benefits are overutilized.

☐ Accidents Multiply

From the office to the warehouse, employees abusing alcohol and other drugs put themselves and others at great risk. They have nearly **four times** the risk of a fall, fire, vehicle accident, or other type of injury. The safety of other workers and the general public is also at risk.

☐ Performance Drops

Poor job performance also results when employees are abusing alcohol and other drugs in the workplace. **Motivation** and **cooperation** decrease, while **absenteeism** and **unpredictability** increase. **Lowered production** and losses from theft means lower profits and less money available for pay raises and employee benefits.

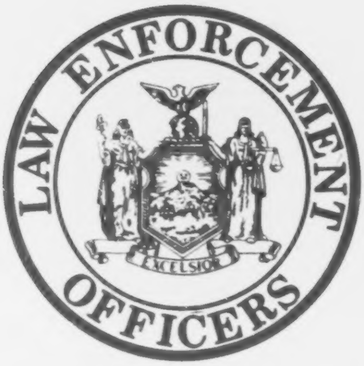
☐ Morale Declines

Short tempers, poor communication, low-quality work...all can lead to a feeling of **frustration** and **resentment** among co-workers, especially when it means doing someone else's work or taking responsibility for problems that started elsewhere.

☐ Health Benefits Costs Increase

Employees with problems use more health benefits. In a recent Alexander and Alexander Co. study, employees with these problems and, referred by the EAP, filed **$7,300 less** in claims than other employees.

Law Enforcement Officers and Alcohol



Mario M. Cuomo, Governor
Marguerite T. Saunders, Director
New York State Division of
Alcoholism and Alcohol Abuse
194 Washington Avenue
Albany, NY 12210

1990

LAW ENFORCEMENT OFFICERS & ALCOHOL

Law enforcement is a high stress occupation. High ranking police officials, union representatives, officers and their families are aware that police personnel experience higher rates of heart disease, marital problems, alcoholism, stress, and suicide than other occupations. In studies on job stress and police, conducted by the National Institute for Occupational Safety and Health, police department officials have reported that about 25 percent of the officers in their respective departments have serious alcohol abuse problems. And if you expect that alcoholism and other drug abuse problems may be present in your agency, you are right to be concerned.

Alcoholism is present in all types and sizes of police agencies and other work organizations. Abuse of alcohol and other drugs is responsible for job performance problems and absenteeism and contributes to on-the-job accidents and safety issues. The cost to management and labor mounts up in terms of sick time, medical care, retraining and property damage.

The bottom-line dollar problem is obvious – chemical dependency costs money. But, as a concerned police official or labor leader, you are also interested in your employees or co-workers, and serious personal problems can wreck people's lives.

ALCOHOLISM

Alcoholism is a chronic, progressive disease **characterized** by definite signs and symptoms — loss of control over drinking, memory blackouts, increased **tolerance**, craving, physical dependence and **withdrawal**. Alcoholism gradually weakens the body's normal resistance to other illnesses. Then it damages the major organs of the body, especially the digestive system, liver, brain, and heart. Alcoholism can destroy individuals and entire families; it can also have a community-wide impact.

The progressive nature of the disease also means that most chemically dependent employees are "hidden" in the early stages. They do not necessarily exhibit overt physical symptoms until the latter stages of the disease, when recovery is that much more difficult.

You may sometimes wonder why workers with alcoholism do not just stop drinking and get help. The fact is: they are usually unable to recognize that their alcohol dependence is causing problems in their lives and on the job. This **denial** frequently prevents them from seeking assistance, unless someone intervenes and helps them to face the reality of their illness. Work organizations may also face their own denial which may prevent them from responding and taking constructive action.

DRINKING PATTERNS

Law enforcement officers are a close knit group. For many, their only friends are other men or women in uniform. After work, they often get together to unwind and review the events of the day over a few drinks. An officer may also drink alone, looking to relieve the pressures of the job. These occasions often set the stage for alcohol abuse. When a buddy starts to experience an alcohol-related problem, the group or even the officer's immediate supervisor may at times cover up or minimize the drinking, rather than "turn in" this person for discipline or professional help. This attitude of a supervisor or others, though well-meaning, can be another form of denial that is symptomatic of alcoholism.

Good intentions by co-workers only allow the disease to worsen. Left untreated, these officers will continue to have repeated drinking episodes on and off the job, leading to charges that they are unfit for duty, as well as a host of personal or job performance problems and civilian complaints. Often impaired officers are sensitive to being discovered and labeled "drunken cops". They visualize being apprehended and placed in the "rubber gun" squad on limited duty. Suspension time in the street creates an additional financial hardship for these officers and their families, so that they will go to extremes to conceal the problem.

Consequently, the illness continues to progress. Termination from the job and premature death may result unless someone intervenes and assists them to get help.

POLICE RESPONSE

Historically, many police agencies have viewed personal and stress-related problems as the individual officer's own business. When these problems resulted in poor job performance, they were either ignored or denied. If the problems continued and became more serious, organizations were often perplexed about handling them. To protect the officer, co-workers, equipment and the public, police agencies often felt that their only recourse was to discipline or fire the officer for security and safety reasons. This approach to resolving job performance problems, caused by personal or emotional difficulties, has not been successful in assisting and retaining valuable and experienced staff, or reducing the cost of alcoholism, substance abuse or other problems within the police force.

EAP — THE SENSIBLE SOLUTION

Alcoholism and other substance abuse problems are treatable. Each year sick people by the thousands begin on the road to recovery and become active, healthy members of families and communities, as well as productive, reliable employees. For many, the first step is INTERVENTION, also known as secondary prevention. In intervention, the impaired employee is helped to face the realities of addiction and its devastating consequences. When intervention occurs early, chemical dependencies and other problems can be arrested more easily and physical complications can be minimized or prevented altogether. The workplace is ideally suited for **early intervention**.

An EAP (Employee Assistance Program) is a cost effective, confidential, early intervention system designed to help employees with problems that interfere with their ability to function on the job. EAPs help to identify and motivate for treatment employees whose job performance is impaired by alcoholism, alcohol abuse, substance abuse, emotional problems, mental illness and other human problems.

EAPs are not new to police agencies. The New York City Police Department developed the first formal alcoholism counseling program for police in New York State in 1966. Since then, many other police agencies throughout the State have started EAPs. These programs have proven to be cost-effective, saving police agencies much more money than their operational costs. Studies indicate that at least four dollars are returned for every dollar invested through improved job performance and reduced employee health payments. Recovery rates from alcoholism between 66 percent - 80 percent have been reported.

Other reports on police EAPs show:

- Sick time down by more than 50 percent.
- Disciplinary actions decreased by more than 70 percent.
- Lower arbitration costs.
- Improved job performance — commendations up by 50 percent.
- Higher morale.

EAPs were developed because of the realization that seasoned police officers are valuable assets to their departments, and an investment in employee health to retain experienced personnel is a good investment. Officers who are referred to EAPs return to the workforce as healthy, dependable and productive employees. Both they and their families are grateful for the help received.

Implementing an effective EAP for your police agency is neither complicated nor expensive. New York State already has a network of EAP service providers and consultants located in communities throughout the state to assist police organizations regardless of the size.

For more information on EAPs and local providers who can assist employees with alcohol and other drug problems on the job, contact the EAP consultant of the New York State Division of Alcoholism and Alcohol Abuse nearest you:

■ Upstate EAP Consultant
716 James Street
Syracuse, NY 13202-2080
Phone: (315) 428-3212

■ Downstate EAP Consultant
270 Broadway — Room #410
New York, NY 10007
Phone: (212) 587-4943

■ Bureau of Workplace & Institutional Intervention Services
194 Washington Avenue
Albany, NY 12210
Phone: (518) 474-6422

[redacted]

Alcohol & Drugs On The Job

Mario M. Cuomo, Governor

Marguerite T. Saunders, Director

The New York State Division of
Alcoholism and Alcohol Abuse

ALCOHOL & DRUGS ON THE JOB

At least one in every ten persons in the workforce is affected by alcoholism and other drug abuse according to the Washington-based Bureau of National Affairs. This abuse winds up costing business a whopping $100 billion annually. And if you expect that alcohol and drugs may be abused in your workplace, you are right to be seriously concerned. If you haven't already had to deal with this, you may well be facing such decisions in the future. The information that follows will help you to understand the problem and assist you in finding solutions.

Most of the attention and media coverage on drugs in the workworld has focused on the use of illegal drugs. Yet, in fact, the most widely abused drug, and consequently, the drug with the greatest cost to American business, is alcohol.

Alcoholism, like other drug dependencies, is present in all types and sizes of work organizations, both in the private and public sectors. The abuse of alcohol and other drugs is responsible for performance problems and absenteeism, and contributes to on-the-job accidents and safety problems. The cost to business and labor mount up in terms of down time, medical care, retraining, and property damage.

The bottom-line dollar problem is obvious—abuse costs you money. But, as a concerned employer or labor leader, you are also interested in your employees, and alcoholism does indeed wreck people's lives.

NICE, HARD-WORKING PEOPLE

People with alcoholism and substance abuse are not moral weaklings; nor are they the unemployed skid row bums or street addicts who actually make up only a small percentage of the addicted population. They're not just young people either. "Nice, hard-working" people do develop these dependencies. Often they are those valuable, long-term employees that are the most difficult and expensive to replace.

The nation's greatest drug problem, alcoholism, cuts across all boundaries—age, sex, race—and can affect anyone. According to the National Institute on Alcohol Abuse and Alcoholism, 45 percent of employees with alcoholism come from the management and professional ranks, 30 percent are manual workers and 25 percent are white-collar workers.

Alcoholism is a chronic, progressive disease characterized by definite signs and symptoms—loss of control over drinking, memory blackouts, increased tolerance, craving, physical dependence and withdrawal. Alcoholism gradually weakens the body's normal resistance to other illnesses. Then it damages the major organs of the body, especially the digestive system, liver, brain and heart. Left unchecked, it results in early death. Alcoholism can destroy individuals and entire families; it can also have a community-wide impact.

The progressive nature of the disease also means that most chemically dependent employees are "hidden" in the early stages. They do not necessarily exhibit overt physical symptoms until the latter stages of the disease, when recovery is that much more difficult.

You may sometimes wonder why workers with alcoholism do not just stop drinking and get help. The fact is: they are usually unable to recognize that their alcohol dependence is causing problems in their lives and on the job. This denial frequently prevents them from seeking assistance, unless someone intervenes and helps them to face the reality of their illness. Work organizations may also face their own denial which may prevent them from responding and taking constructive action.

RECOGNIZING THE PROBLEM

Obviously, the occasional, recreational use of alcohol and other drugs can affect an employee's performance and productivity. But the real problem for you as an employer or labor leader is that worker whose use is a lot more than occasional. It is those employees who are dependent on alcohol and/or other drugs; or it may be those whose poor job performance results from living with a family member who has the illness.

Employees with chemical dependency problems have a major impact on productivity, staff morale, profits and labor/management relations. Their hidden illness is responsible for:

✓ **DECLINING PERFORMANCE:** poor concentration; confusion in following directions; noticeable change in the quality of work; inability to meet deadlines; errors in judgment affecting the health and safety of others.

✓ **INCREASED COSTS:** five times the average sick and accident benefits; higher job turnover, replacement and training costs; greater compensation and health insurance payments; three-to-five times more on-the-job accidents.

✓ **ABSENTEEISM AND TARDINESS:** double the normal absence rate; repeatedly being late for work and often leaving early; extended lunch hours; frequent illness and accidents both on and off the job.

✓ **DAMAGED RELATIONSHIPS:** emotional outbursts, overreaction to criticism, mood swings, complaints from co-workers, associates and the public; often leading to damaged relations with customers and the public.

Regardless of company or union size, all this adds up to a runaway loss of profits and unmanageable personnel problems. If this is allowed to continue, valuable, trained and loyal employees continue to decline, often lose their jobs, and may even lose their lives.

THE SENSIBLE SOLUTION

Varied approaches are being tried to prevent and combat alcohol and drugs in the workplace. A number of "quick fixes", drug testing for one, have been highly publicized. Each response differs in terms of cost and effectiveness. By far, the least effective and most expensive response is either to ignore the problem or fire the employee.

Alcoholism and other substance abuse are treatable. Each year sick people by the thousands begin on the road to recovery and become active, useful members of families and communities, as well as productive, reliable employees. For many, the first step is INTERVENTION, also known as secondary prevention. In intervention, the alcohol or other drug dependent person is helped to face the realities of addiction and its devastating consequences. When intervention occurs early, dependencies can be arrested more easily and physical complications can be minimized or prevented altogether. The workplace is ideally suited to early intervention.

EAP

You have a legitimate concern about your employees' ability to perform their jobs. If alcohol and other drugs interfere with that ability, you can intervene as part of your rightful concern about the performance, productivity and health of your employees or union members. The earlier a worker is channeled to professional help, the greater the potential that you will see the return of a productive employee and a stable workforce.

The way to ensure success is to develop an EAP-EMPLOYEE ASSISTANCE PROGRAM—for your organization. EAPs are cost-effective, confidential, early intervention systems that help employees whose alcohol, other drug dependencies, or other serious personal problems, interfere with their ability to function effectively on the job. EAPs furnish a sensible path for labor and management to follow in constructively dealing with a seriously troubled employee.

■ WILL IT WORK?

EAPs have been operating effectively for years, saving small and large organizations millions of dollars and saving the lives and careers of many valuable employees. 65% to 85% of employees with alcoholism problems, who are referred to EAP, return to the workforce as useful, productive employees. Most of them become very loyal employees and are grateful for the help they have received.

Implementing an effective EAP is neither complicated nor expensive. New York State already has a network of EAP service providers and consultants located in communities throughout the state to assist companies and unions. For more information on EAPs and local providers who can help you deal with alcohol and other drug problems on the job, contact the EAP Consultant of the New York State Division of Alcoholism and Alcohol Abuse nearest you:

- **Upstate EAP Consultant**
  716 James Street
  Syracuse, NY 13202-2060
  Phone: (315) 428-3212
- **Downstate EAP Consultant**
  270 Broadway—Room #410
  New York, NY 10007
  Phone: (212) 587-4943
- **Occupational/Industrial**
  Services Bureau
  194 Washington Avenue
  Albany, NY 12210
  Phone: (518) 474-6422

EAP

WRITTEN TESTIMONY FOR UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND ENERGY

MARCH 8, 1991

BY LIEUTENANT GOVERNOR MELVIN A. STEINBERG

Good Morning Mr. Chairman and Committee Members. I appreciate this opportunity to appear before you on behalf of Governor William Donald Schaefer to address this extremely important matter of drugs in the workplace and, especially, how it affects the small business community.

With me today is Mr. Floyd Pond, Executive Director of the Governor's Drug and Alcohol Abuse Commission, Mr. Frank Carven, Special Counsel to my office, Ms. Joann Levy, the Commission's Drug-Free Workplace Coordinator, and Mr. Joseph Deegan, who is on loan to the Commission from the Baltimore Gas and Electric Company.

Following are the responses to the questions which were sent by subcommittee staff.

1. In your state, please characterize:

   (a) the role that substance abuse plays in the small business workplace;

   During the Summer of 1990, the University of Maryland conducted a survey of small businesses within the State of Maryland. The following results are from that survey:

   - 76% thought that drug abuse was a serious problem in the Maryland workforce, and 11% thought there was a serious problem in their own firm.

   - 10% felt that one or more of their employees worked on a regular basis under the influence of drugs, and 12% felt that one or more of their employees worked on a regular basis under the influence of alcohol.

   (b) the level of awareness that small business employers have that substance abuse problems exist;

   The University of Maryland survey indicated that 81.5% of employers saw drug abuse as a serious problem for the U.S. workforce, 76.4% saw it as a serious problem for the Maryland workforce, and only 11% saw it as a serious problem in their business.

   (c) how small businesses generally deal with substance abuse in the workplace;

   - 53.6% of Maryland businesses reported having a drug/alcohol policy; and, of those, 34% reported having a written policy.

- 66% of Maryland businesses (roughly 102,000 businesses) do not currently have a written drug/alcohol policy.

- 11% of Maryland businesses have a written policy that includes drug testing, with pre-employment testing being the most frequently used.

- 14% of businesses have a written policy that requires treatment for employees known to have drug/alcohol problems.

- 19% of businesses have a written policy that specifies the availability of employee benefits for substance abuse treatment.

- 10% of businesses with a written policy have an employee assistance program.

- 13% of the written policies require the business to provide substance abuse education.

- During 1989, 2.7% of businesses called police for assistance with drug problems.

(d) what sort of resources (e.g. federal, state, local and private) are available to small businesses to address these issues.

Governor Schaefer's Committee on Drugs in the Workplace Initiative provides on-site technical assistance to companies who want/need to establish a Drug-Free Workplace, as well as, conducting seminars, conferences, and training throughout the year. A unique feature of the Initiative is the volunteer Consultant Resource Network, by which the technical assistance is provided. It consists of labor and employment attorneys, Employee Assistance Program providers, and substance abuse prevention and treatment experts from around Maryland. These individuals also help companies comply with the many new Federal and State regulations requiring them to establish drug-free workplace policies and programs.

In addition to the above, the following is also available:

- a Maryland Database Drug and Alcohol Prevention and Treatment Programs Directory (prepared by the University of Maryland for the Governor's Drug and Alcohol Abuse Commission). This directory is available to Maryland businesses at no cost.

- implementation of a "talking yellow page" number by the One Book linking employers who need assistance directly to the Initiative Program Coordinator.

- programs held by the Maryland Chamber of Commerce and many county chambers of commerce that are geared to helping the small business community. Many of Maryland's larger corporations also provide assistance, training, etc., for the small business community.

2. What has been the impact on your state of the Drug-Free Workplace Act and other federal efforts and requirements on small business? Have these laws been a help or a hindrance?

The federal efforts, as well as State of Maryland executive orders concerning drug-free workplaces have definitely been of assistance in promoting drug-free workplaces. The State of Maryland and some private corporations have, like the federal government, required the workforce seeking contracts to have drug-free workplaces. These definitely have been of great assistance in this program.

3. What special initiatives have been undertaken by your state to identify and make small businesses aware both of substance abuse in the workplace and how these issues can be effectively addressed? Has your state experienced any increase in queries from small businesses regarding substance abuse programming?

The main initiative has been Governor Schaefer's Drug-Free Workplace program. We are experiencing on a regular basis an increase of inquiries from small businesses as a result of media awareness programs, seminars, and assistance from civic groups.

4. Are those small businesses taking steps to address substance abuse in the workplace doing so as a result of governmental efforts (either state or federal), or are they acting independently?

Majority of indications show that small businesses taking steps to address substance abuse in the workplace are a result of both state and federal governmental efforts and, as a result, of a majority of corporations requiring contractors to have drug-free workplaces.

5. Please characterize the efforts that the federal government has made to define, understand and address substance abuse problems in the small workplace. For example, NIDA and the Department of Labor are the principal federal sources of information regarding substance abuse in the workplace. Would additional efforts by the Small Business

Administration be effective in conducting outreach to the small business community?

While the federal government has made efforts to define, understand and address substance abuse programs in the small business workplace, the efforts by and large are not reaching the small business community. There is a need for additional efforts by the federal government to define procedures for better reaching the small business community, as well as indicating to the small business community how the federal government can help.

Specifically, the federal government could work through the states in providing monies for the states to assist small business communities in developing consortiums in drug testing, treatment, prevention programs, etc.

6. In your opinion, are the issues that the federal government has raised as part of its National Drug Strategy the correct ones?

Yes, we are in agreement that the issues raised by the federal government concerning the National Drug Strategy are correct and coincide with the efforts and plans of the State of Maryland.

7. Based on your experience, how effective has the federal drug strategy been at addressing the problems and concerns of small businesses? What could the federal government do to increase the effectiveness of these efforts?

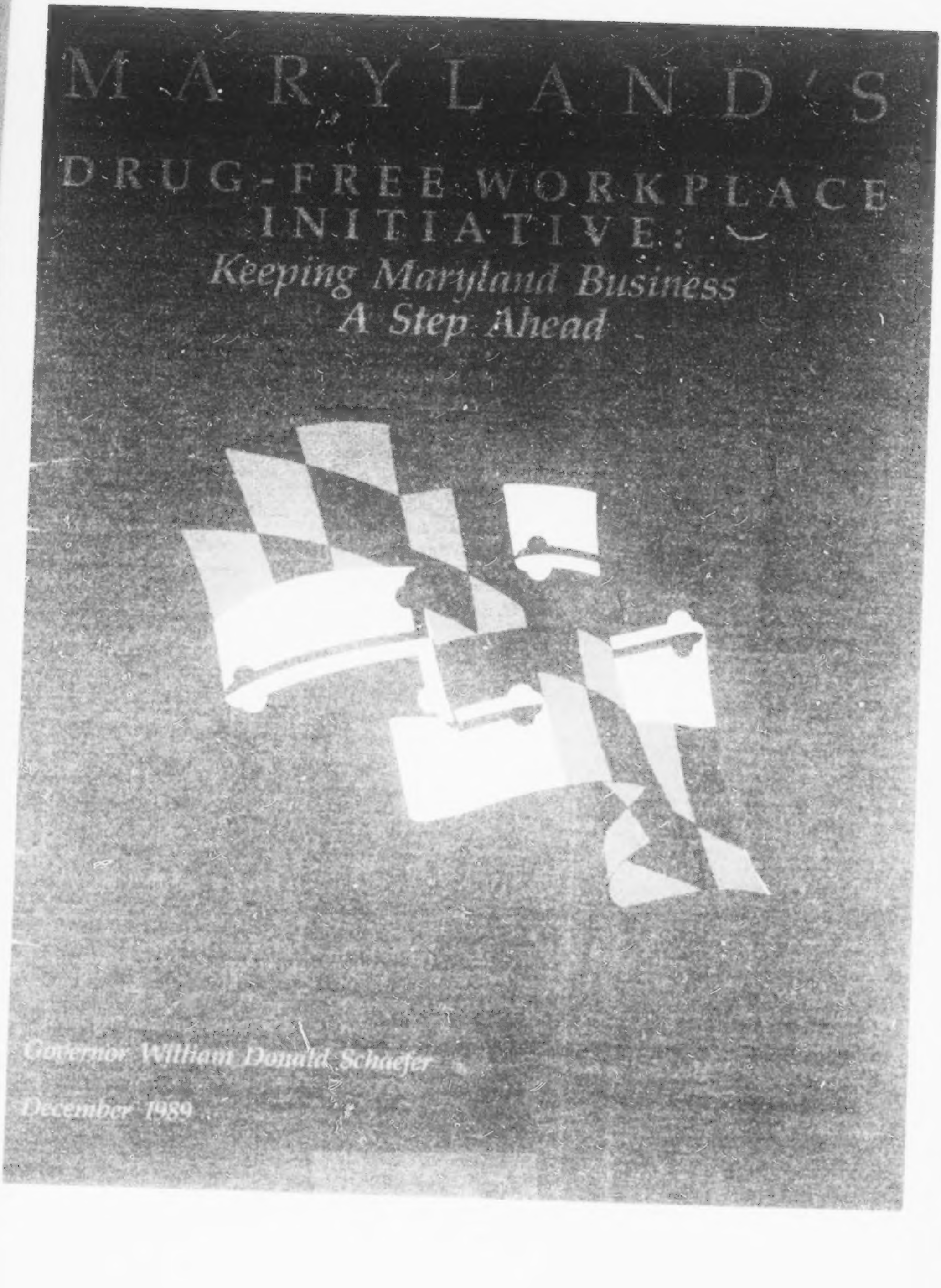
Based on our experiences, the federal drug strategy in addressing the problems of small businesses is ineffective. Basically, small businesses are not aware of the federal government's concerns. The federal government needs to have procedures made available for small businesses and these need to be made available through chambers of commerce or through state agencies.

As to the request to identify businesses that the Governor's Drug and Alcohol Abuse Commission has assisted in establishing Employee Assistance Programs, we are in the process of contacting these businesses to determine their success in developing such programs. Specifically, as of February 25, 1991 we have sent communications to 83 companies and are awaiting their reply.

Again, on behalf of the Governor and myself, I wish to express our gratitude for this opportunity to explain our Drugs in the Workplace Program for the State of Maryland.

Respectfully submitted,

Melvin A. Steinberg
Lieutenant Governor
State of Maryland



MARYLAND'S

DRUG-FREE WORKPLACE INITIATIVE:

Keeping Maryland Business A Step Ahead

Governor William Donald Schaefer

December 1989

MARYLAND'S

DRUG-FREE WORKPLACE INITIATIVE:

Keeping Maryland Business A Step Ahead

The Governor's Advisory Board for Justice Assistance

Governor William Donald Schaefer

December 1989

Drugs in the Workplace Committee

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Bernard C. Trueschler, *Co-Chair, Chairman of the Board, Baltimore Gas & Electric Company*
Linda W. Crawford, *Former Executive Assistant, Governor's Office*
Paul Davis, *Chairman, Maryland Parole Commission*
The Honorable Sidney Kramer, *County Executive, Montgomery County*
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The Honorable Robert C. Murphy, *Chief Judge of the Court of Appeals*
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Dear Maryland Employer:

Drug and alcohol abuse takes its toll on all segments of our society. It can have a devastating effect on schools, families, neighborhoods; and the business community is no exception.

As an employer, you are concerned about the safety of your workplace, as well as the productivity of your employees. You are continually striving to meet the needs of those who work with and for you, and that may mean assisting co-workers with getting help for a drug or alcohol problem.

This handbook represents the efforts of my Drugs in the Workplace Committee. It contains information on how to create a drug-free workplace, including establishing a drug and alcohol policy for your company, and programs that can help employees become more aware of the dangers of drug and alcohol abuse.

I urge you to use this important information in your business. The first step is recognizing that no one is exempt from the effects of drug and alcohol abuse, but you CAN do something about it.

Maryland's economic growth depends in part on the business community's willingness to confront the drug and alcohol crisis. Thank you for taking steps to make your workplace drug free.

Sincerely,

William Donald Schaefer

Governor

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Preface

It is estimated that 10-30 percent of the American workforce lives a drug-oriented lifestyle. This translates into 16-21 million impaired workers per year. Drug and alcohol abusers experience memory loss, apathy, decreased coordination, and a host of changes to the heart, brain, and lungs.

The impact of drug and alcohol abuse in the workplace is felt by companies in many ways. Skyrocketing health care and personnel costs, high levels of absenteeism and turnover, on the job accidents, and decreased productivity can frequently be tied to drug and alcohol abuse. Sometimes it is the employees' spouse, child, or parent who has the problem—if this is the case, the employee's level of performance will eventually be affected.

Business has a responsibility to provide a safe, secure working environment for employees. Hence, the ability to detect and refer employees with drug or alcohol problems to the proper resource is vitally important. It behooves employers to consider several options for dealing with drug and alcohol problems in the workplace.

The first step in creating a drug-free workplace is the development of a company drug and alcohol policy. Programs that support the policy include drug education for employees and their families, Employee Assistance Programs, and training for managers and supervisors in recognizing the signs and symptoms of a drug and/or alcohol problem and the appropriate intervention. A company must also decide on its position regarding urinalysis testing. This handbook contains valuable information on these program options.

A job is a critical component in one's life. What an individual does for a living is a big part of his or her identity. Most people with drug or alcohol problems do not voluntarily seek help—they are referred through another source. Business comprises a large part of those referrals. A person is more likely to obtain treatment if they are referred by their employer than if asked to go by their spouse.

Business can play a crucial role in helping to significantly reduce our current drug and alcohol abuse crisis. The Governor's Office of Justice Assistance (301-321-3521) can assist your company in developing your own specialized program by providing on site technical assistance. In addition, this handbook will enable you to get started in making your place of business drug-free.

Drugs in the Workplace Committee Report

Introduction

In September of 1987, Governor William Donald Schaefer appointed Cornelius J. Behan, Chief, Baltimore County Police Department, and Mr. Bernard C. Trueschler, Chairman of the Board, Baltimore Gas and Electric Company, as Co-Chairs of a committee to address the problem of drug abuse in the workplace in Maryland. The Committee was composed of members whose backgrounds included the judiciary, the legislature, law enforcement and criminology, education, public and private sector management, union representation, and citizen advocacy.

In an October 21, 1987, letter to the Drugs in the Workplace Committee, Governor Schaefer charged the Committee to devise a strategy that would induce each and every Maryland employer to develop and implement a drug and alcohol abuse policy tailored to the needs of the company and its employees.

A further charge was to develop an action plan that would provide employer-employee groups with a wide range of options that recognize the unique nature and needs of the many and varied businesses that make up the State's commercial community.

The Committee also reviewed the Federal Drug-Free Workplace Act of 1988. In general, it requires that for purposes of being awarded a contract for the procurement of any property or services of a value of $25,000 or more from any Federal agency, or to receive a grant from any Federal agency, the recipient of the contract or grant must certify that it will provide a drug-free workplace. Employers that receive or apply for such contracts or grants should closely review its intended substance abuse policy to ensure that it satisfies all requirements for a Federal drug-free workplace. One unique requirement, for example, is for employees of firms receiving such Federal contracts or grants to notify their employer no later than five days after a criminal drug statute conviction for a violation occurring in the workplace. The employer then has 10 days in which to notify the Federal contracting or granting agency.

This Committee report includes a model substance abuse policy for private businesses in Maryland and suggested options that could be used in its implementation. It also includes initial reports from the three standing committees: Prevention and Education, Enforcement and Performance, and Rehabilitation.

Committee staff and consultants gathered data associated with drug use in the workplace. Significant findings included:

- The type and extent of substance abuse in a community tend to be reflected in the workplace.

- Substance abusing employees are less productive, abuse benefits, cause health care costs to rise, are a danger to themselves and others, and encourage criminal activity.

- Written drug policies and employee assistance programs (EAPs) are most often found in large companies that have a full-time personnel staff and a permanent and relatively stable labor force. However, 80 percent of the companies in Maryland have less than 100 employees.

The Committee felt that a model policy statement could be devised that, with minor modifications, would fit the needs of any employer, regardless of company size. This model substance abuse policy would contain a mission statement, define the substances covered, identify the responsibility of the company and its employees, be signed by the top company official and be provided to each employee, and would apply to all levels of personnel. It would serve as the first step of a strategy designed to induce every employer in Maryland to adopt and implement a substance abuse policy.

The Committee agreed that a substance abuse program must consider the specific needs, structure and resources of a company. Since no two companies are totally alike with regard to needs, structure and resources, no single substance abuse program could be devised that would serve as a universal model. However, broad guidelines could be prepared that could serve to assist employers in developing a tailored substance abuse program.

Model Substance Abuse Policy

Definitions as used in this model policy:

(a) "Substance" means alcohol or drugs.
(b) "Alcohol" means ethyl alcohol or ethanol.
(c) "Drugs" means any substance taken into the body, other than alcohol, which may impair one's mental faculties and/or physical performance.
(d) "Abuse" means any use of any illegal drug, or any use of any drug, including alcohol, over the counter, or prescription drugs where use is not in conformance with prescription requirements, or circumstances where use is not permitted.

One of the greatest problems facing our society today is the abuse of drugs and alcohol.

The nationwide impact of substance abuse in the workplace is now estimated to exceed $30 billion annually. This staggering amount only measures lost productivity and quality; it does not put a dollar value on personal pain and suffering.

The management of our company is vitally concerned about the well being of its employees, our most valuable asset. We are equally concerned that our company's hard-earned reputation and positive image not be compromised in any way.

Alcohol and drug abuse have an adverse affect on job performance, create dangerous situations, and serve to undermine our customers' and the community's confidence in our company.

Our company cannot and will not condone drug or alcohol abuse on the part of its employees, nor will it condone any employee behavior on or off the job that may serve to damage the company's reputation.

Our policy concerning drug and alcohol use and abuse is as follows:

1. The company will not hire anyone who is known to currently abuse substances.

2. The company will educate and inform its employees about the health consequences of drug and alcohol abuse.

3. Employees must report to work in a fit condition to perform their duties. Being under the influence of drugs or alcohol is not acceptable.

4. Any employee on company business, on or off company premises, is prohib-

ited from purchasing, transferring, using, or possessing illicit drugs or using alcohol or prescription drugs in any way that is illegal, or counter to published policy.

5. Employees will not be terminated for voluntarily seeking assistance for a substance abuse problem, however, performance, attendance, or behavioral problems may result in disciplinary actions up to and including termination.

6. Employees on physician-prescribed medication must notify a designated company official if there is a likelihood that such medication could affect job performance and safety.

7. Employees arrested for off-the-job drug or alcohol involvement may be considered to be in violation of company substance abuse policy.

8. Where available evidence warrants, the company will bring matters of illegal drug or alcohol use to the attention of appropriate law enforcement authorities.

Program Options

In order to implement a substance abuse program based upon the model policy, a company must decide what program options it wants to offer. Suitable options, and the possible features they might contain, are included for consideration. To facilitate their review, the option features are synopsized.

Prevention and Education

1. Inform management of the nature, extent, and consequence of substance abuse within the work force and the prospective work force market, even if specific acts do not manifest themselves, thereby obtaining a commitment to work towards a drug-free workplace.

2. Disseminate to all managers, employees and prospective employees, the company's written policy on substance abuse through the usual route of personnel communications.

3. Provide employees, with the aid of employee groups if appropriate, accurate information on the legal, physical and psychological consequences of on-the-job and off-the-job substance abuse.

4. Train all supervisors, and where appropriate, representatives of employee groups, about drugs and paraphernalia; signs and symptoms of substance abuse; and performance deterioration signals, which aids them in implementing the company's substance abuse policy.

5. Provide a list of public and private resources available to managers and employees that will assist them in addressing their substance abuse prevention, intervention, and treatment needs.

Enforcement and Performance

Drug Testing

1. **Each employer should consider the value of pre-employment drug testing for all appropriate applicants. Obviously such pre-employment testing must be within the boundaries of exiting law, economically feasible for the employer, and based upon a careful analysis of the positions for which testing is required.**

2. **Each employer should consider the value of "for cause" drug testing and testing that is provided within a treatment program. Employer's should, when**

there are clear indications of performance problems that are related to drug use, require that individuals submit to an established testing protocol. Similarly, individuals enrolled in treatment programs may be required to submit to drug testing.

3. Employers should require random testing for all employees in appropriately designated sensitive positions.

4. Employers should require random testing during any routinely required physical examination.

5. Any drug testing must be carried out in compliance with carefully developed, comprehensive testing protocols that have been reviewed by and disseminated to all employees. The Committee has reviewed various protocols and recommends that employers consider the drug testing standards contained in Mandatory Guidelines for Federal Drug Testing Programs (Appendix A).

Detecting Substance Abuse

1. All managers and supervisors should be trained to identify job performance problems that may be caused by substance abuse, and to be aware of the appropriate response to such employees.

2. Employers should consider establishing some method that would enable employees to confidentially or anonymously report any drug supplier in the workplace. The method must be used with full respect for the rights of all parties concerned. Information received through this method should be thoroughly and completely investigated before any action is taken by the employer.

The Role of Law Enforcement Agencies

1. Employers should meet with appropriate local government agencies (e.g., law enforcement agency, office of alcohol and drug abuse coordination, etc.) to establish an agreement concerning the role each will play in responding to drug abuse in the workplace. Such an agreement usually should begin with an assessment of the situation. An effort should be made to determine the knowledge and understanding the employer, key managers, and line supervisors have regarding drugs in the workplace. If training is required, basic training may be provided to supervisors and managers.

2. In emergency situations, such as when sale or use of illegal drugs are observed, local law enforcement should be contacted using the appropriate emergency phone number. The employer should, as with any emergency

situation, be able to describe the activity observed, identify involved persons and witnesses, etc.

3. If an employer suspects specific substance abuse acts are occurring within the workplace but has no direct knowledge of such activity, local law enforcement should be contacted to discuss what kind of investigation is most appropriate.

4. Employers should understand that when assistance is requested from local law enforcement and a criminal proceeding is subsequently initiated they will be expected to support the criminal proceeding by testifying, providing paid release time for others to testify, etc.

Rehabilitation

1. Companies should consider implementing Employee Assistance Programs (EAPs) because these programs have a positive impact on people with problems, facilitate positive management/labor relations, encourage problem resolution, maintain an employee's dignity and confidentiality, and provide a return on the company's investment.

2. An EAP should be open to all employees on a self or supervisory referred basis for the purpose of information, advice, referral, or counseling. The purpose of counseling in the EAP is to assist employees with problems which impact adversely upon work performance or conduct. When these problems are effectively confronted and treated, the employees are expected to become healthier, better adjusted individuals and are likely to perform more productively in their jobs.

3. Supervisors and other appropriate management and union personnel should be trained in recognizing employees with problems, and how to utilize the EAP.

4. Except for limitations on sensitive positions, no employee's job security or promotion opportunity should be jeopardized by a request for counseling or outside referral assistance from the EAP in connection with alcohol, drug abuse, or emotional problems.

5. An EAP should operate under a clearly defined policy which outlines the purpose of the EAP, organizational and legal mandates, employees eligibility, roles and responsibilities of various personnel in the organization, and procedures for program use.

6. A company should review its health benefits package for the purpose of determining adequacy of coverage for alcohol and drug abuse problems.

Prevention and Education Subcommittee Prevention Management Program Model

In order to address the problem of drug and alcohol abuse in the workplace, it should be the goal of every Maryland business, public or private, to establish a clearly defined prevention/education plan. This plan, applicable to any size company, identifies the company's role and responsibilities in deterring substance abuse by improving job performance and enhancing the quality of life among the work force and the community it serves.

The initial step in this process focuses on the importance of informing management and union leadership of the nature and extent of drug and alcohol abuse within the work force and the prospective work force market.

Management and union leadership need to be apprised of the economic and administrative problems associated with drug and alcohol abuse in the workplace.

Critical to this approach is the establishment of a company substance abuse policy, which is supported by detection, education and treatment programmatic alternatives.

Once management's informational needs are met and a policy has been developed, training must be established for supervisors to assist direct line management and union representatives in identifying the signs and symptoms of drug and alcohol abuse to aid them in implementing the company's substance abuse policy.

An adjunct to supervisory training is the need to inform, educate and train employees as to the on-the-job and off-the-job effect of alcohol and drug abuse.

This Prevention Program Model foresees as indispensable the identification and development of resources available within the public and private sector to assist management and employees in addressing their prevention, intervention and treatment needs.

The cumulative effect of a company's responsible role in addressing the substance abuse issue in the workplace extends to establishing a leadership role within the community which promotes the company's mission to insure a drug-free workplace for its prospective and current workforce.

In conclusion, we recommend companies, regardless of size, develop the following three stage process to reduce their substance abuse users: Phase one – Awareness and Information; Phase two – Policy Development, Education and Training and Phase three – Resource Identification and Development of a Referral Network and Procedures.

Implementing the Workplace Prevention Program

Action Steps to Meet the Needs of:	**Top Management and Union Officials**	**Supervisors and Union Representatives**	**Employees**	**The Total Community**
Phase 1 Develop awareness of the problem.	**Provide facts** about substance abuse by the local workforce and by job applicants. Use surveys of students, households, workplaces, and treatment programs. **Identify the economic and administrative impacts** of substance abuse in specific industries. Focus on safety, quality, productivity, costs, and profits. Examine recruitment, placement, discipline, termination, legal responsibilities, fringe benefits, bonding, and liability insurance.	**Explain** the nature and extent of alcohol and drug abuse in the local workforce. **Describe the specific impacts** of workforce substance abuse. ·Tardiness ·Absenteeism ·Reduced productivity ·Decreased quality ·Lowered morale ·Discipline problems ·Safety problems ·Health problems	**Give facts** about the scope of local drug and alcohol abuse and its impacts on families and children. Use data from local surveys and treatment programs. **Explain the problems** resulting from substance abuse by coworkers. ·Behavior problems ·Safety problems ·Financial problems ·Health problems **Spread information** through employee newsletters, paycheck statements, and posters.	**Conduct outreach information programs** to inform families, schools, community organizations, the local business community, and prospective job applicants. **Spread the message** that only drug-free applicants will be considered for employment.
Phase 2 Establish Company Policy, Training, and Education.	**Develop** the company's substance abuse policy. **Establish** a training program for supervisors. **Set up** education programs for employees. **Determine** an appropriate drug testing policy.	**Provide training** on how to recognize signs and symptoms of substance abuse. **Train supervisors** to implement company policy about what to do and whom to contact if an employee is unfit for duty or has alcohol or illegal drugs.	**Orient** new employees to the company policy and programs. **Educate all employees** about addiction and its effects on the individual and the family. **Set up employee peer leadership groups** to promote drug-free lifestyles.	**Inform** the media, community leaders, and schools about the company's drug-free workplace policy and programs. **Set up a Business Roundtable** through the local Chamber of Commerce so business leaders can develop and share policies.
Phase 3 Set up a Referral Network and Procedures.	**Contact the local county Prevention Coordinator** for help in finding public and private education and training resources. **List local services** for education, training, and treatment. **Establish a referral network** through the company, a consortium of small businesses, or a community-based program.	**Establish intervention procedures** to handle self-referrals and referrals from families, supervisors, unions, and medical providers. **Assist employee re-entry** after treatment, through followup and support of treatment recommendations.	**Refer and link employees** to needed counseling services. **Establish peer support groups** like Alcoholics Anonymous and Narcotics Anonymous within the company or through a consortium of companies.	**Take part in public awareness campaigns.** **Establish a business community prevention plan** through the local Chamber of Commerce to support the county prevention plan. Include reciprocal agreement so company receives training program assistance from local Prevention Coordinator and gives financial and inkind support for specific prevention projects.

Report of the Enforcement and Performance Standards Subcommittee

Introduction

In the enforcement of an organization's substance abuse policy, several principles should be considered. First, substance abuse enforcement activities must be clearly and closely related to performance standards established by that organization and clearly articulated to all personnel. The basis for enforcement activities must be the employees' expected performance within that organization. Second, the organization must make every reasonable effort to protect the privacy interests of the employees and to conduct all enforcement activities with an understanding of its impact upon the full scope of the organization's activities. Third, the enforcement activities must be primarily guided by the goal of assisting employees to overcome substance abuse problems and only secondarily by a goal of punishment.

In developing an enforcement strategy, there are three essential elements that need to be addressed: first, the issue of drug testing; second, the procedures used to identify the extent and type of substance abuse problems existing within the organization; and third, the procedures by which organizations involve local law enforcement in addressing the issue of substance abuse within the organization. The Subcommittee has developed guidelines for enforcement within each of these areas.

An employer must establish and maintain an awareness of real or potential drug and alcohol abuse among its work force. Timely knowledge of such problems will afford an employer more opportunities to initiate corrective actions. However, to establish and maintain such an awareness, an employer must inform and educate all levels of personnel of the adverse impact of drug and alcohol abuse within the workplace. Employees must know that they are required to be fit for duty at all times, and, if necessary, demonstrate their fitness. Lines of communication must remain open and all employees must be encouraged to contribute toward keeping their work environment substance free. Supervisors should be trained and alert to recognize that fitness for duty problems among their subordinates may be indicative of substance abuse. Education, then, is a critical component of an organization's entire substance abuse policy and is especially important as the basis for establishing a program of enforcement.

Drug Testing

The Subcommittee has carefully reviewed the issues surrounding various uses of drug tests in the workplace. Based on that review, especially the very careful analysis provided by the Maryland Chamber of Commerce and a legal opinion developed by former Attorney General Sachs, the Subcommittee recommends the following approach. Use of drug testing must be based on carefully developed drug testing protocols. It is especially important that if drug testing is to be utilized, that it be done in a way that guarantees to the highest degree possible, that drug tests are done fairly and results are accurate. This will require the use of confirmatory tests, the establishment of strict chains of command and specimen control, the utilization of testing procedures and testing organizations that have clear records of reliability and validity, and the provision of a right to review all aspects of the drug testing program.

Provided such protocols are established (the procedures recommended by the U.S. Department of Health and Human Services – Mandatory Guidelines for Federal Workplace Drug Testing Programs, Appendix A attached, – should be considered) the Subcommittee would recommend that each employer consider the value *of a policy of pre-employment testing for all appropriate applicants.* The Subcommittee believes that such pre-employment testing is within the boundaries of existing law, and that it would establish a very effective way for organizations to control entry into their work force of individuals with known substance problems. In addition, it would send a clear message to the community that employment for those who are using drugs and alcohol would be less likely. At the same time any such policy must accept the notion that some organizations may test and still decide to hire those individuals who test positive, provided that participation in programs appropriate to their substance problem are required as a condition of employment. Second, the Subcommittee recommends *adoption of a policy for cause drug testing and testing that is provided within a treatment regimen.* Organizations should be able, when there are clear indications of performance problems and when indicators suggest that these performance problems are related to substance abuse, to require that individuals submit to an established testing protocol. Similarly, for individuals who are found to be substance abusers and who are then enrolled in a treatment program, substance testing should be permissible within that treatment. For cause testing and treatment testing are increasingly being utilized within the private and public sectors and should be encouraged by our Committee. Third, we recommend *approval of the policy of random testing for sensitive positions.*

The organization would be required to define a "sensitive position" and would, of course, need to make this known and to develop a reasonable basis for such classification. For those sensitive positions, testing would be appropriate both at entry and on a periodic basis. Finally, the Subcommittee recommends *adoption of a policy which allows for drug testing during any routine physical required by the* *organization.* This might be at the time of promotion, for example, and again would establish clearly the importance the organization places on controlling substance abuse.

An important issue that applies in all aspects of testing, is the confidentiality of results and the scope of such confidentiality. However, we are concerned that any policy be developed within an understanding that access to results should be very closely guarded both for the protection of the individual and the protection of the organization.

Finally, there is the problem of what to test for. We note that organizations have adjusted the scope of testing dependent upon the nature of the drug problem amongst their employees. For example, within an educational setting, testing almost always includes steroids, which may not be a problem in the normal work environment.

In summary, the Subcommittee recommends a policy of limited drug testing—drug testing that is limited to pre-employment, for cause, testing related to treatment, random testing for sensitive positions, and testing in conjunction with routinely required physical examinations.

Becoming Aware of Substance Abuse Within an Organization

In addition to drug testing, an organization should be encouraged to utilize other means of gaining knowledge about the substance abuse problems of its employees. All managers and supervisors should be trained to identify job performance problems that may be caused by substance abuse, and to be aware of the appropriate response to such employees. Employers should also consider establishing some method that would enable employee's to confidentially or anonymously report any drug supplier in the workplace.

An employer who solicits anonymous information must use it responsibly and with the knowledge that the information received is not always accurate or factual. The provider of such information may have honestly misinterpreted what was seen or heard or in the extreme case may be maliciously attempting to improperly use the system to settle a grudge with a co-worker or supervisor. An employer, while using such efforts to become more aware of substance abuse problems in the organization, must scrupulously avoid situations that could result in the misuse of any information provided by employees. An employer that does not have attorneys, security personnel or other staff who are trained and experienced in analyzing and acting on such allegations should consider seeking external professional guidance. It is also reasonable to expect that employers will establish early liaison with local law enforcement to determine in advance what law enforcement's response is likely to be within anticipated parameters and what assistance the local law enforcement can give in interpreting such information.

The Role of Local Law Enforcement

When organizations become aware of cases involving known or suspected abuse of local drugs on their premises, it is reasonable to expect that they will and should, in many instances, turn to local law enforcement for assistance. In order to facilitate this, organizations should develop protocols describing the anticipated relationships between their organization and local police. The nature of the protocol may very well depend upon the nature of the situation faced by the organization. These situations can be described either as emergencies or cases involving differing levels of suspicion. These will require different forms of relationship with law enforcement.

The local law enforcement agency should be contacted by an employer whenever the employer determines police are needed immediately to handle an emergency drug situation such as persons actually observed using drugs. The police should be contacted using the appropriate emergency phone number (usually 911). These situations will usually result in a uniformed police officer responding to conduct an investigation, make an arrest if appropriate, and prepare a report.

The employer should, as with any emergency situation, be able to describe to the responding officer the activity observed, identify involved persons and witnesses, etc.

If an employer suspects specific substance abuse acts are occurring within his establishment, he should contact the local law enforcement agency's narcotics unit. The employer should have as much available information (who, what, when, where, and why) as possible before making this initial contact.

The police response will usually involve an appointment to meet with the employer or key management person to discuss the situation and make an evaluation. If the department believes there is sufficient evidence (e.g.,pinpointed problem and identified suspects, witnesses who can testify, and complainant/employer who will prosecute/testify) the police department may take appropriate action (e.g., surveillance, warrants, etc.) if adequate resources are available. The employer may be asked to gather more facts (e.g., from supervisors, security staff, or contract for outside investigative service, etc.).

If an employer has some suspicion there are some substance problems on his premise or he has concerns about substance abuse among employees, he should contact the local government drug and alcohol abuse coordinator or local law enforcement agency's narcotics unit.

The local government's response usually begins with an assessment of the situation. An effort should be made to determine the knowledge and understanding the employer, his key managers, and line supervisors have regarding drugs in the workplace. Quite often the drug and alcohol coordinator, police department staff, or some other department agency will provide some basic training to supervisors or managers on what they should look for regarding usage among employees, symptoms of usage, conditions and situations to safeguard against, etc.

An employer should not expect the local law enforcement agency to conduct a lengthy undercover investigation of their employees, particularly if the employer only has suspicions. Usually the local police department does not have the resources to undertake such activities. If such an investigation is necessary, the employer will be prepared to use the services of a private security investigator.

The employer who has his own security force should see that his security manager has and maintains close cooperation and coordination between his force and the local government law enforcement agency. Similarly, the police department should keep the company's security manager informed of conditions and situations affecting their employees and operations. The security manager should be involved (at least informed) about appropriate drugs in workplace situations.

The employer, whenever feasible, should support the carrying out of the criminal prosecution of defendants involved in drugs in the workplace cases. The non-judicial sanctions, such as demotion, transfer, termination, while appropriate should be supplemented by appropriate criminal prosecution. These cases will involve the more serious illegal acts, distribution, transportation and sale of drugs. It is important for the employer to follow through, thereby sending the message that illegal activities will not be condoned by management. The employer should make it convenient for employees who are victim/witnesses to attend appropriate hearings, conferences and trials.

The local police agency and prosecutor must keep the employer informed on the progress of the case as it goes through the criminal justice system. Where possible, decisions to offer plea bargains should be discussed with the employer prior to the offer. A performance and enforcement strategy that involves drug testing, the use of techniques to identify substance abuse problems within the organization and appropriate liaison with local law enforcement is recommended.

Rehabilitation Subcommittee

The Value of Employee Assistance Programs

An EAP is open to all employees on a self- or supervisory-referred basis for the purposes of information, advice, referral or counseling. The types of problems handled in an EAP range from addictions and emotional problems to providing information on where to find childcare.

Costs to Industry

It is estimated that at any time, 18 percent of any work force is affected by personal problems that can effect job performance. Of the 18 percent, 12 percent are problems related to alcoholism and drug addiction, and 6 percent are related to emotional problems. Job performance problems can effectively decrease productivity from impaired employees by 25 percent, leaving them working only at a 75 percent capability. This loss in terms of dollars for the company can reach astronomical levels.

This 25 percent loss in productivity is a conservative estimate based on such measurable items such as absenteeism and sick leave. It does not include hidden costs. Table 1 gives a complete listing of measurable, hidden, and legal costs to the organization, based on job performance problems. Most of these losses are as yet undocumented in relation to EAPs and may prove to yield substantial cost savings possibilities.

TABLE 1
Losses To Organization

Measurable Losses	Hidden Losses	Losses Related to Legal Claims
Absenteeism	Diverted Supervisory/ Managerial Time	Workmens Compensation
Overtime Pay	Friction Among Workers	EEO Complaints
Tardiness	Waste	Disciplinary Actions
Sick Leave Abuse	Damage to Equipment	Grievance Procedures/ Other legal Actions
Health Insurance Claims	Poor Decisions	Threat to Public Safety
Disability Payments	Damage to Public Image	Illegal Drug Trafficking on the Job
	Personnel Turnover	Security Issues
	Premature Death	

Information is reprinted from Dale A. Masi, "Employee Assistance Programs," *Occupational Medicine: State of the Art Reviews*, Vol. 1, No. 4, October-December, 1986, p. 655-656.

Program Development

The success of an Employee Assistance Program rests on 14 essential ingredients that must be taken into account when developing an EAP. These elements are all equally important and are not listed in order of priority (Masi, 660.).

1. Top management support.
2. A detailed plan of implementation and operation spanning at least three years.
3. A policy statement clearly defining the purpose of the EAP, organizational and legal mandates, employee eligibility, roles and responsibilities of various personnel in the organization, delineation of procedures for program use, etc. Examples of policy issues to be decided are whether to see family members and whether to grant administrative leave time for EAP appointments, or sick leave.
4. Short term counseling, information, assessment and referral services.
5. Appropriate professional staffing.
6. Confidential record keeping system.
7. A community referral network.
8. Appropriate organizational and physical location.
9. Union support. Unions have been supportive of joint labor-management programs, and it is important to solicit union support and participation in any policy development or implementation of an EAP.
10. Mechanisms for funding. There are basically three ways an EAP is funded. One is for the company to assume all expenses for an in-house program. The most popular way is for the company to contract out for a flat per capita rate. Another way would be for the company to administer the program but contract out for fee for service.
11. Supervisory and union personnel training.
12. Employee outreach and education.
13. Awareness and resolution of legal issues.
14. Program evaluation.

EAP Policy Guidelines

1. The purpose of counseling in the EAP is to assist employees with problems which impact adversely upon work performance or conduct. When these problems are effectively confronted and treated, the employees are expected to become healthier, better adjusted individuals and are likely to perform more productively in their jobs.

2. Employees who suspect they have an alcohol, drug abuse or emotional problem, whether or not it currently affects their work, are encouraged to use

the EAP voluntarily on a confidential basis. Employees who voluntarily seek out the services of the EAP but wish to maintain their privacy must arrange to do so on their own time (e.g., lunch period, before or after their duty hours based on the availability of a counselor, sick or annual leave). Self-referred employees who wish to inform their supervisors of EAP attendance may receive official duty time while at EAP for assessment for up to two sessions. Self-referred employees will receive the same counseling services, including outside referral to community resources, as supervisor-referred employees.

3. When an employee's work performance is inadequate, the supervisor must advise the employee of the deficiency and allow an opportunity to correct the problem. Early confrontation of inadequate work performance will generally be most helpful in returning employees to full productivity. When the supervisor determines that ordinary supervisory methods are not bringing about improvement in an employee's performance, the supervisor should:

   a. Discuss the situation with an EAP counselor. At these supervisory consultations, the Counselor acquires a good understanding of the employee's performance problems and assists the supervisor in referring the employee, if appropriate. The supervisor may also wish to discuss the situation with the servicing personnel office.

   b. Offer the employee referral to the EAP. The supervisory referral to the EAP should be written as well as oral. The written referral is the supervisor's record that an offer of counseling has been made to the employee. The counselor assists the supervisor in preparing this memorandum during supervisory consultation sessions. The written referral should only: (1) document the inadequate work performance; (2) specify that neither the documentation nor the referral to the EAP constitutes a disciplinary action; (3) indicate that the supervisor has spoken to an EAP counselor; and (4) offer EAP services to the employee. This memorandum must not be placed in the employee's Official Personnel Folder. If the memorandum is part of a system of records of the supervisor, the Privacy Act prevents its disclosure beyond the EAP without the employee's consent. If an adverse action is taken against an employee who received a written offer of EAP assistance and who subsequently denies having received it, the written referral may become part of the adverse action file as the supervisor's record of compliance.

   c. Allow a reasonable period, as determined jointly by the supervisor and the counselor, for the employee's work performance to improve.

   d. Consult with the servicing personnel office in taking administrative or disciplinary actions if acceptable job performance does not result after the decided-upon period.

4. Like poor performance, an employee's misconduct may be caused or aggravated by alcohol abuse, drug abuse, or emotional problems. Whenever possible, supervisors should consider referring such employees to the EAP prior to or concurrent with proposed disciplinary actions. An offer of assistance, even one made concurrently with the proposed disciplinary action, does not protect the employee against such action. When a supervisor has good reason to believe that an employee's misconduct is directed towards, or potentially harmful to, others or to property, the supervisor's first obligation is to those persons or properties and then to the employee. As in paragraphs 3a and b above, the supervisor should first discuss the situation with an EAP counselor and then orally and in writing offer the employee referral to the EAP.

5. Regardless of the nature of the referral, the EAP counselor will not disclose any information about a participating employee to the employee's supervisor without the employee's written consent. The EAP counselor will discuss the Consent Form which the employee has the option to sign, but is not required to do so. Only if the employee signs the form, may the EAP counselor inform the supervisor whether the employee is making progress. If the employee chooses not to sign the Consent Form, the EAP counselor may not disclose any information to the supervisor, except whether or not the employee made or kept appointments during duty hours. The Consent Form may also be used when a counselor refers an employee to a community resource. In this instance, the signed consent allows the community resource to provide to the EAP counselor, not the supervisor, information about an employee's progress.

6. Employees are on official duty when they meet with EAP counselors, provided they inform their supervisors directly or do so indirectly by signing the Consent Form. Employees who do not want their supervisors to know of their attendance at EAP counseling sessions must arrange appointments outside duty hours based on the availability of a counselor, during lunch periods, or during periods of approved leave. Employees who are referred to community resources for treatment must request approved leave for these treatment sessions if they occur during the employee's scheduled work day. As stated in paragraph 2, employees may take up to two assessment sessions without using leave time, provided they inform their supervisors.

7. Whenever outside referral to community agency or practitioner is deemed advisable for an employee, the EAP will refer the employee to appropriate treatment services. The EAP will attempt to assure that the costs of such treatment are kept within the employee's financial means by utilizing third-party payments, sliding fee scale community resources, and self-help groups to the extent possible.

8. Counseling records and information from employee visits to the EAP will be kept, as all medical records, in a confidential manner.

9. Except for limitations for sensitive positions:

   a. No employee's job security or promotion opportunity will be jeopardized by a request for counseling or outside referral assistance form the EAP in connection with alcohol or drug abuse or emotional problems.

   b. No person will be denied employment solely on the grounds of prior alcohol or drug abuse or emotional problems.

However, any employee who holds a sensitive position may take advantage of the EAP on a voluntary basis. *(U. S. Department of Health and Human Services Employee Assistance Program Model.)*

EAP Program Guidelines

1. **Staffing**. In each EAP unit there is a Unit Director and one or more counselors, usually one Counselor to every 3,500 employees. All EAP counselors are professionally trained psychologists, social workers, psychiatric nurses, psychiatrists, or certified alcohol and drug abuse counselors. Anyone currently employed in providing EAP services should be considered as meeting the requirements of this program. Counselors may also be interns properly supervised by the above mentioned professionals. All counselors must have expertise in the area of alcoholism and drug abuse. All counselors are encouraged to maintain their skills and knowledge base by enrolling in appropriate continuing education programs. If certification is a standard or usual qualification, counselors should be encouraged to enter that process.

2. **Scope of Clientele.** Each EAP program will provide counseling and/or outside referral services on a confidential basis to all employees who seek them, either as self-referrals or as supervisory referrals. Services provided to family members are limited to family members dealing with the alcohol or drug abuse of an employee, and to employees dealing with the alcohol or drug abuse of a family member.

3. **Supervisory Training**. Training and orientation programs will be provided by the EAP Unit Director to supervisors and managers at all levels.

4. **Informational Programs.** Each EAP program shall provide informational programs to all employees, directed toward developing an awareness of various alcohol, drug abuse, and emotional problems that can affect job performance or conduct.

5. **Cooperatives (Consortia).** An EAP unit may participate in a cooperative (consortium) arrangement to provide the counseling services to employees in Regional Offices or outlying field installations.

6. **Outside Contractor.** If a cooperative program is not possible or desirable, an EAP may arrange for an outside contractor to provide counseling and other EAP program services. An outside contractor must have professional liability insurance coverage, since the company will only defend a counselor who is an employee against any suit by an EAP client. To avoid possible conflict of interest, outside contractors must demonstrate their use of referral to community resources in addition to their own facilities.

7. **Use of State Treatment Facilities.** Where possible state facilities should be utilized for employee treatment (for state guidelines only).

8. **Reporting.** Two categories of information are required from each EAP Unit; summary statistical data on clients and information on various administrative functions. This information should be submitted quarterly to the Director of Human Resources and/or the Medical Director, and the Board of Directors where appropriate. *(U. S. Department of Health and Human Services Employee Assistance Program Model.)*

Integration of EAP into the Management System

The EAP depends upon many others' familiarity with, support for, and cooperation with the program. EAP Unit Directors are encouraged to develop cooperative and supportive relationships with:

1. **Personnel Staff.** The staff in the personnel office can do much to support the EAP. For example, they can:

    a. Recommend EAP referral to supervisors who seek advice on disciplinary actions or to employees who complain that working conditions are aggravating or causing personal problems.

    b. Alert the EAP staff to potential problem situations, such as increased stress in an organizations due to reorganizations, inspections/surveys, or major changes in personnel assignments or performance expectations.

    c. Alert the EAP staff to problems which emerge through personnel management evaluations and other indicators such as leave use trends, high volume of appeals and grievances, attrition and requests for outplacement assistance.

d. Include information on the EAP in orientation sessions for new employees.

e. Assist in arranging for supervisory training in the EAP.

2. **Equal Employment Opportunity Program Staff.** The EEO staff and counselors can play a very important role in support of the EAP. Through discussion and interaction, they can help make EAP personnel aware of some of the unique stresses minorities, women, and handicapped persons often experience in the work setting.

The Role of State Government

The Governor's Drug and Alcohol Abuse Commission addressed the importance of maintaining a drug-free workplace in Maryland's Drug and Alcohol Abuse Control Plan published in October 1989. One of the major goals of the Plan is to "maximize State government's role in addressing the problem of substance abuse." The following are implementation strategies developed to support the Commission's recommendation to maintain a drug-free workplace.

1. Explore the use of additional sanctions or submit legislation on substance abuse to include employee penalties for on or off the job behavior that violates the State's policy; e.g., loss of State vehicle driving privilege, denial of conference requests, denial of training opportunities, removal from promotional list, etc.

2. Require a drug-free workplace certification for all contractors doing business with the State. Contractors performing safety sensitive functions should be required to incorporate a drug testing program.

3. Explore whether or not accident leave and workman's compensation claims, as part of a comprehensive training, testing, and treatment program, should be denied to any employee whose accident was the result of using illegal substances or alcohol on the job.

4. Promote server intervention programs in the restaurant and entertainment business.

5. Offer technical assistance, in partnership with the Maryland Chamber of Commerce, to the private business community, especially small businesses, to implement drug-free workplace policies.

6. Establish a budgeted position within the Governor's Office, using the resource and technical capabilities of the Department of Economic and Employment Development, that would coordinate efforts to facilitate workplace policy and program implementation in the private sector.

7. Stipulate that any companies requiring permits to do business in Maryland shall meet the requirements of a drug-free workplace.

8. Explore expansion of Motor Vehicle Administration's Flagging Program, which notifies employers of employee driving infractions, to serve private industry.

9. Provide substance abuse education in the workplace as it relates to parental responsibility.
10. Provide administration for drug testing for sensitive classifications.
11. Expand employee assistance and wellness programs.

Appendices

Attachment A

Executive Order

Attachment A

The State of Maryland
Executive Department

EXECUTIVE ORDER
01.01.1989.05

State of Maryland Substance Abuse Policy

WHEREAS, Substance abuse is a serious national crisis which has had a detrimental effect on the lives of many of our citizens, and has exerted a negative effect on the operation of business and government; and

WHEREAS, Surveys indicate that of the 18-25 year old adult population nationwide, representing those entering the workforce, 65% have used illicit drugs; and

WHEREAS, It is estimated that as much as 15% of the American workforce arrives for work each day under the influence of drugs or alcohol; and

WHEREAS, Every employer, including the State of Maryland, experiences a loss in productivity due to drug related absenteeism, injuries on the job, decreased work quality and wasted dollars; and

WHEREAS, Substance abusing employees function below established standards, may make impaired decisions, may have negative effects on their co-workers, and are not as alert as non-using employees; and

WHEREAS, The illegal use of the workplace as a market place for drugs endangers the health, safety and welfare of State employees; and

WHEREAS, The State must maintain a work environment which eliminates this waste and supports the health, well-being and productivity of all its employees as they carry out their responsibilities to the citizens of Maryland; and

WHEREAS, The Federal Omnibus Drug Abuse Act of 1988 stipulates that any State which is a recipient of Federal dollars must establish a Drug-Free Workplace, including a policy on use of substances, a drug awareness program for employees and a a procedure for self-reporting convictions; and

WHEREAS, A drug-free workplace is fundamental to efficient, effective and responsive government;

NOW, THEREFORE, I, WILLIAM DONALD SCHAEFER, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING ORDER EFFECTIVE IMMEDIATELY:

A. In this Executive Order, the following words have the meanings indicated.

(1) "Substance" means alcohol or drugs.

(2) "Alcohol" means ethyl alcohol or ethanol.

(3) "Drugs" means any substance, including controlled dangerous substances, taken into the body, other than alcohol, which may impair one's mental faculties, changes one's mood and/or physical performance.

(4) "Abuse" means:

(a) Any use of any illegal drug;

(b) Intentional misuse of any over-the-counter drug, in cases where such misuse impairs job performance;

(c) Use of any prescription drug in a manner inconsistent with its medically prescribed, intended use, or under circumstances where use is not permitted;

(d) Use of alcohol where such use impairs job performance; and

(e) Intentional and inappropriate use of any substance, legal or illegal, which impairs job performance.

(5) "Workplace" means a State owned or utilized premise for official State business.

(6) "Sensitive classes" are those in which the Secretary of Personnel has determined that all of the following conditions exist:

(a) A substantially significant degree of responsibility for the safety of others;

(b) A potential that impaired performance of the employee could result in death of or injury to the employee or others; and

(c) Lack of close monitoring of the employee's behavior which reduces the possibility of intervention or assistance by another when necessary.

B. The State of Maryland establishes and adopts the following substance abuse policy:

(1) Employees are prohibited from unlawfully manufacturing, distributing, dispensing, possessing, or using a controlled substance in the workplace.

(2) Where justified by reliable information and/or observation, criminal violations shall be referred to the appropriate law enforcement authority for further investigation and prosecution.

(3) The State will not hire anyone who is known to currently abuse drugs or alcohol.

(4) All employees must report to work in a fit condition to perform their duties. Reporting to work under the influence of drugs or alcohol is a violation of this policy and shall subject the employee to disciplinary action.

(5) All employees on official business, on or off the workplace, are prohibited from purchasing, transferring, using, or possessing illegal drugs or from abusing alcohol or prescription drugs in any way that is illegal.

(6) All employees must report any drug conviction to their supervisor within five (5) days of that conviction.

(7) All employees convicted of off-the-job drug or alcohol offenses will be in violation of this policy.

(8) All employees must cooperate fully with appropriate law enforcement authorities in the investigation and prosecution of illegal drug or alcohol use.

(9) The State of Maryland will educate and inform its employees about:

(a) The dangers of drug and alcohol abuse in the workplace and the community at large;

(b) The State of Maryland's policy of maintaining a drug-free workplace;

(c) Any drug and alcohol abuse counseling, rehabilitation, and employee assistance programs that are available; and

(d) The penalties that may be imposed upon employees for drug and alcohol abuse violations.

(10) Employees will not be terminated for voluntarily seeking assistance for a substance abuse problem. However, continued unacceptable job performance, attendance and/or behavior problems shall result in disciplinary action up to and including termination.

(11) Those employees who are assigned to designated sensitive classes will be terminated if they are found to be in violation of this policy.

(12) Any employee found to be in violation of any of the provisions of this policy shall be subject to the penalties contained in Article 64A of the Annotated Code of Maryland, which provides sanctions up to and including termination.

(13) All department heads and supervisors are responsible for adherence, implementation, enforcement and monitoring of this policy.

(14) As a condition of employment, all employees of the State of Maryland are required to acknowledge receipt of this policy by returning a signed copy of the affirmation to their supervisors for insertion in their personnel files.

C. The State of Maryland is committed to making good faith efforts to insure a safe, secure, and drug-free workplace for its employees consistent with the Drug-Free Workplace Act, governmental operations and the needs of employees to work in a drug-free environment conducive to productive and satisfying job experiences. This policy requires the cooperation and support of all employees as we move toward that objective.

GIVEN Under My Hand and the Great Seal of
the State of Maryland, in the City of
Annapolis, this 7th day of April,
1989.

William Donald Schaefer

William Donald Schaefer
Governor

ATTEST:

Winfield M. Kelly
Secretary of State

1632

Attachment B

Federal Guidelines

Attachment B

federal register

Monday
April 11, 1988

Part IV

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Final Guidelines; Notice

MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

Subpart A—General

1.1 Applicability.
1.2 Definitions.
1.3 Future Revisions.

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Authority: E.O. 12564 and sec. 503 of Pub. L. 100–71.

Subpart A—General

1.1 Applicability.

(a) These mandatory guidelines apply to:

(1) Executive Agencies as defined in 5 U.S.C. 105;

(2) The Uniformed Services, as defined in 5 U.S.C. 2101 (3) (but excluding the Armed Forces as defined in 5 U.S.C. 2101(2));

(3) And any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(b) Any agency or component of an agency with a drug testing program in existence as of September 15, 1986, and the Departments of Transportation and Energy shall take such action as may be necessary to ensure that the agency is brought into compliance with these Guidelines no later than 90 days after they take effect, except that any judicial challenge that affects these Guidelines shall not affect drug testing programs subject to this paragraph.

(c) Except as provided in 2.6, Subpart C of these Guidelines (which establishes laboratory certification standards) applies to any laboratory which has or seeks certification to perform urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only laboratories certified under these standards are authorized to perform urine drug testing for Federal agencies.

(d) The Intelligence Community, as defined by Executive Order No. 12333, shall be subject to these Guidelines only to the extent agreed to by the head of the affected agency.

(e) These Guidelines do not apply to drug testing conducted under legal authority other than E.O. 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

(f) Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary. In requesting approval for a deviation, an agency must petition the Secretary in writing and describe the specific provision or provisions for which a deviation is sought and the rationale therefor. The Secretary may approve the request upon a finding of good cause as determined by the Secretary.

1.2 Definitions.

For purposes of these Guidelines the following definitions are adopted:

Aliquot A portion of a specimen used for testing.

Chain of Custody Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved agency chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt of the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

Collection Site A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function.

Confirmatory Test A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the intitial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Initial Test (also known as Screening Test) An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Permanent Record Book A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

Reason to Believe Reason to believe that a particular individual may alter or substitute the urine specimen as provided in section 4(c) of E.O. 12564.

Secretary The Secretary of Health and Human Services or the Secretary's designee. The Secretary's designee may be contractor or other recognized organization which acts on behalf of the Secretary in implementing these Guidelines.

1.3 Future Revisions.

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register**.

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.

(a) The President's Executive Order 12564 defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them, Federal drug testing programs shall test for drugs as follows:

(1) Federal agency applicant and random drug testing programs shall at a minimum test for marijuana and cocaine;

(2) Federal agency applicant and random drug testing programs are also authorized to test for opiates, amphetamines, and phencyclidine; and

(3) When conducting reasonable suspicion, accident, or unsafe practice testing, a Federal agency may test for any drug listed in Schedule I or II of the CSA.

(b) Any agency covered by these guidelines shall petition the Secretary in writing for approval to include in its testing protocols any drugs (or classes of drugs) not listed for Federal agency testing in paragraph (a) of this section. Such approval shall be limited to the use of the appropriate science and technology and shall not otherwise limit agency discretion to test for any drugs covered under Schedule I or II of the CSA.

(c) Urine specimens collected pursuant to Executive Order 12564, Pub. L. 100–71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law.

(d) These Guidelines are not intended to limit any agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees or employees in its regulated industries.

2.2 Specimen Collection Procedures.

(a) Designation of Collection Site. Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) Security Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) Chain of Custody. Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) Access to Authorized Personnel Only. No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(f) Integrity and Identity of Specimen. Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other agency official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or

any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance in the permanent record book.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of a specimen is outside the range of 32.5°–37.7°C/90.5°–99.8°F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)((19)–(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter in the permanent record book all information identifying the specimen. The collection site person shall sign the permanent record book next to the identifying information.

(22) The individual shall be asked to read and sign a statement in the permanent record book certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) A higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(24) The collection site person shall complete the chain of custody form.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) Collection Control. To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the

container, the collection site supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

2.3 Laboratory Personnel.

(a) Day-to-Day Management.

(1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology, or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in 2.4(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) Test Validation. The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) Day-to-Day Operations and Supervision of Analysts. The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) Other Personnel. Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) Training. The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) Files. Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

2.4 Laboratory Analysis Procedures.

(a) Security and Chain of Custody. (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of the Secretary, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) Receiving. (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the agency's chain of custody forms attached to the shipment shall be immediately reported to the agency and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) Short-Term Refrigerated Storage. Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) Specimen Processing. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) Initial Test. (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	[1] 300
Phencyclidine	25
Amphetamines	1,000

[1] 25ng/ml if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Initial test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(f) Confirmatory Test. (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test level (ng/ml)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates:	
Morphine	[*] 300
Codeine	[*] 300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.

[2] Benzoylecgonine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Confirmatory test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(g) Reporting Results. (1) The laboratory shall report test results to the agency's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time.

(2) The laboratory *shall report as negative* all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The Medical Review Officer may not disclose quantitation of test results to the agency but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer a certified copy of the original chain of custody form signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports.

(6) The laboratory shall provide to the agency official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of Federal employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing:

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines

(ii) Confirmatory Testing:

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite

Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

(7) The laboratory shall make available copies of all analytical results for Federal drug testing programs when requested by DHHS or any Federal agency for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the agency in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) Long-Term Storage. Long-term frozen storage (−20 °C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the agency, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an agency may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) Retesting Specimens. Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) Subcontracting. Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the agency. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.

(k) Laboratory Facilities. (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with Subpart C of these Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) Inspections. The Secretary, any Federal agency utilizing the laboratory, or any organization performing laboratory certification on behalf of the Secretary shall reserve the right to inspect the laboratory at any time. Agency contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the agency to conduct unannounced inspections. In addition, prior to the award of a contract the agency shall carry out preaward inspections and evaluation of the procedural aspects of the laboratory's drug testing operation.

(m) Documentation. The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by DHHS or by any Federal agency for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) Additional Requirements for Certified Laboratories.—(1) Procedure Manual. Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) Standards and Controls. Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in services; and expiration date.

(3) Instruments and Equipment. (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) Remedial Actions. There shall be written procedures for the actions to be taken when systems are out of accceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) Personnel Available To Testify at Proceedings. A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee when that proceeding is based on positive urinalysis results reported by the laboratory.

2.5 Quality Assurance and Quality Control.

(a) General. Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) Laboratory Quality Control Requirements for Initial Tests. Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) Laboratory Quality Control Requirements for Confirmation Tests. Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) Agency Blind Performance Test Procedures. (1) Agencies shall purchase drug testing services only from laboratories certified by DHHS or a DHHS-Recognized certification program in accordance with these Guidelines. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the agency is testing.

(4) The Secretary shall investigate any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be make of the Secretary's investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the drug testing laboratory. Then the Secretary shall send the document to the agency contracting officer as a report of the unsatisfactory performance testing incident. The Secretary shall ensure notification of the finding to all other Federal agencies for which the laboratory is engaged in urine drug testing and coordinate any necessary action.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the Secretary may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the laboratory shall submit all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The Secretary may require an on-site review of the laboratory which may be conducted unannounced during any hours of operations of the laboratory. The Secretary has the option of revoking (3.13) or suspending (3.14) the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

2.6 Interim Certification Procedures.

During the interim certification period as determined under paragraph (c), agencies shall ensure laboratory competence by one of the following methods:

(a) Agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense; or

(b) Agencies may develop interim self-certification procedures by establishing preaward inspections and performance testing plans approved by DHHS.

(c) The period during which these interim certification procedures will apply shall be determined by the Secretary. Upon noticed by the Secretary that these interim certification procedures are no longer available, all Federal agencies subject to these Guidelines shall only use laboratories that have been certified in accordance with Subpart C of these Guidelines and all laboratories approved for interim certification under paragraphs (a) and (b) of this section shall become certified in accordance with Subpart C within 120 days of the date of this notice.

2.7 Reporting and Review of Results.

(a) Medical Review Officer Shall Review Results. An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to agency administrative officials.

(b) Medical Review Officer—Qualifications and Responsibilities. The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be an agency or contract employee. The role of the Medical Review Officer is to review and interpret positive test results obtained through the agency's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

(c) Positive Test Result. Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result

with him or her. Following verification of a positive test result, the Medical Review Officer shall refer the case to the agency Employee Assistance Program and to the management official empowered to recommend or take administrative action.

(d) Verification for opiates; review for prescription mediation. Before the Medical Review Officer verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of illegal use of any opium, opiate, or opium derivative (e.g., morphine/codeine) listed in Schedule I or II of the Controlled Substances Act. (This requirement does not apply if the agency's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) Reanalysis Authorized. Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified under these Guidelines.

(f) Result Consistent with Legal Drug Use. If the Medical Review Officer determines there is a legitimate medical explanation for the positive test result, he or she shall determine that the result is consistent with legal drug use and take no further action.

(g) Result Scientifically Insufficient. Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, as provided in 2.7(e), that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with these Guidelines.) The laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the agency. The Medical Review Officer shall report to the Secretary all negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

2.8 Protection of Employee Records.

Consistent with 5 U.S.C. 522a(m) and 48 CFR 24.101–24.104, all laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 552a. In addition, laboratory contracts shall require compliance with the patient access and confidentiality provisions of section 503 of Pub. L. 100–71. The agency shall establish a Privacy Act System of Records or modify an existing system, or use any applicable Government-wide system of records to cover both the agency's and the laboratory's records of employee urinalysis results. The contract and the Privacy Act System shall specifically require that employee records be maintained and used with the highest regard for employee privacy.

2.9 Individual Access to Test and Laboratory Certification Results.

In accordance with section 503 of Pub. L. 100–71, any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 Introduction.

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

3.2 Goals and Objectives of Certification.

(a) Uses of Urine Drug Testing. Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated in 2.4 (e) and (f).

(b) Need to Set Standards; Inspections. Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus on-site inspection. Maintenance of certification requires participation in an every-other-month performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) Urine Drug Testing Applies Analytical Forensic Toxicology. The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, property documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

3.3 General Certification Requirements.

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for certification under these standards.

3.4 Capability to Test for Five Classes of Drugs.

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: Marijuana, cocaine, opiates, amphetamines, and phencyclidine, using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (2.1(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of using the methods specified. Certified laboratories must clearly inform non-Federal clients when procedures followed for those clients conform to the standards specified in these Guidelines.

3.5 Initial and Confirmatory Capability at Same Site.

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (2.4 (e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (2.1(a) (1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

3.6 Personnel.

Laboratory personnel shall meet the requirements specified in 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

3.7 Quality Assurance and Quality Control.

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in 2.5 of these Guidelines.

3.8 Security and Chain of Custody.

Laboratories shall meet the security and chain of custody requirements provided in 2.4(a).

3.9 One-Year Storage for Confirmed Positives.

All confirmed positive specimens shall be retained in accordance with the provisions of 2.4(h) of these Guidelines.

3.10 Documentation.

The laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in 2.4(m).

3.11 Reports.

The laboratory shall report test results in accordance with the specifications in 2.4(g).

3.12 Certification.

(a) General. The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified and laboratory that is certified by a DHHS-recognized certification program in accordance with these Guidelines.

(b) Criteria. In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality assurance/quality control program;

(4) The performance of the laboratory on any performance tests;

(5) The laboratory's compliance with standards as reflected in any laboratory inspections; and

(6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

3.13 Revocation.

(a) General. The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by a DHHS-recognized certification program in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) Factors to Consider. The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;

(2) Unsatisfactory participation in performance evaluations or laboratory inspections;

(3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) Period and Terms. The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

3.14 Suspension.

(a) Criteria. Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by a DHHS-recognized certification program in accordance with these Guidelines.

(b) Period and Terms. The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

3.15 Notice: Opportunity for Review.

(a) Written Notice. When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return

receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) Opportunity for Informal Review. The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and the Department of Health and Human Services and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law shall not apply. The decision of the reviewing official shall be final.

(c) Effective Date. A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) DHHS-Recognized Certification Program. The Secretary's responsibility under this section may be carried out by a DHHS-recognized certification program in accordance with these Guidelines.

3.16 Recertification.

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these Guidelines or any DHHS-recognized certification program in accordance with these Guidelines, and any other conditions imposed as part of the suspension or revocation, the Secretary may recertify the laboratory or accept the recertification of the laboratory by a DHHS-recognized certification program.

3.17 Performance Test Requirement for Certification.

(a) An Initial and Continuing Requirement. The performance testing program is a part of the initial evaluation of a laboratory seeking certification (both performance testing and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) Three Initial Cycles Required. Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for inspection and certification. These initial three cycles (and any required for recertification) can be compressed into a 3-month period (one per month).

(c) Six Challenges Per Year. After certification, laboratories shall be challenged every other month with one set of at least 10 specimens a total of six cycles per year.

(d) Laboratory Procedures Identical for Performance Test and Routine Employee Specimens. All procedures associated with the handling and testing of the performance test specimens by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) Blind Performance Test. Any certified laboratory shall be subject to blind performance testing (see 2.5(d)). Performance on blind test specimens shall be at the same level as for the open or non-blind performance testing.

(f) Reporting—Open Performance Test. The laboratory shall report results of open performance tests to the certifying organization in the same manner as specified in 2.4(g)(2) for routine laboratory specimens.

3.18 Performance Test Specimen Composition.

(a) Description of the Drugs. Performance test specimens shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one specimen container, but generally no more than two drugs will be present in any one specimen in order to imitate the type of specimen which a laboratory normally encounters. For any particular performance testing cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories participating will have analyzed the same total set of specimens.

(b) Concentrations. Performance test specimens shall be spiked with the drug classes and their metabolites which are required for certifications: marijuana, cocaine, opiates, amphetamines, and phencyclidine, with concentration levels set at least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated. Some performance test specimens may be identified for GC/MS assay only. Blanks shall contain less than 2 ng/ml of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use.

3.19 Evaluation of Peformance Testing.

(a) Initial Certification. (1) An applicant laboratory shall not report any false positive result during performance testing for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of performance testing required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges for each shipment. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger). Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

(b) Ongoing Testing of Certified Laboratories.—(1) False Positives and Procedures for Dealing With Them. No

false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates. Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positive:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurence of the particular error in the future and, if there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time fo final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for the day-to-day management of the laboratory's urine drug testing. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a retest sample must be corrected because the critieria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's certification for all drugs or for only the drug or drug class in which the error occurred. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action.

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) Requirement to Identify and Confirm 90 Percent of Total Drug Challenges. In order to remain certified, laboratories must successfully complete six cycles of performance testing per year. Failure of a certified laboratory to maintain a grade of 90 percent on any required performance test cycle, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) Requirement to Quantitate 80 Percent of Total Drug Challenges at ±20 Percent or ±2 standard deviations. Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger).

(4) Requirement to Quantitate within 50 Percent of Calculated Reference Group Mean. No quantitative values obtained by a certified laboratory may differ by more than 50 percent from the calculated reference group mean.

(5) Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug. For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2), (b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) Procedures When Requirements in Paragraphs (b)(2)–(b)(5) of this Section Are Not Met. If a certified laboratory fails to maintain a grade of 90 percent per test cycle after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3), (b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to successfully quantitate test results and how it failed to successfully quantitate. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) 80 Percent of Participating Laboratories Must Detect Drug. A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) Participation Required. Failure to participate in a performance test or to participate satisfactorily may result in suspension or revocation of certification.

3.20 Inspections.

Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

3.21 Results of Inadequate Performance.

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in 3.13 and 3.14 of these Guidelines.

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Governor's Drug and Alcohol Abuse Commission
Suite 1105
300 East Joppa Road
Towson, Maryland 21204

10 STEPS

TO A DRUG-FREE WORKPLACE

1 Learn about the impact of substance abuse on your company in terms of safety, health, productivity, and economics.

2 Develop a company substance abuse policy.

3 Develop alcohol and drug education programs for management and employees.

4 Establish an education and training program for managers and supervisors.

5 Identify community resources for substance abuse rehabilitation—private and public.

6 Inform prospective employees that only drug-free applicants will be considered for employment.

7 Participate in business roundtables through the local Chamber of Commerce to develop and share drug-free workplace strategies.

8 Participate in public awareness campaigns promoting a drug-free lifestyle.

9 Determine whether drug testing is right for your company.

10 Promote the company's drug-free workplace program through media, schools, and community leaders.

Governor Schaefer's Office can help employers to establish a drug-free workplace. Just complete this pledge card and drop it in the mail. We'll call you to set up an appointment.

☐ **YES!** I ACCEPT GOVERNOR SCHAEFER'S CHALLENGE TO ESTABLISH A DRUG-FREE WORKPLACE.

☐ We're on our way, but would like more information on specific areas.

☐ We would like to start a drug-free work-place program, and would like assistance.

☐ Our company has already established a drug-free workplace program.
  - ☐ Policy
  - ☐ Employee substance abuse prevention and education programs
  - ☐ Employee rehabilitation programs
  - ☐ Testing

Name of Company

Address

City State ZIP

Telephone Number

Contact Person

GOVERNOR'S DRUG & ALCOHOL ABUSE COMMISSION

Governor's Drug and Alcohol Abuse Commission
Suite 1105
300 East Joppa Road
Towson, Maryland 21204
(301) 321-3521

MARYLAND'S

DRUG-FREE WORKPLACE INITIATIVE:

GETTING STARTED

Drug-Free Workplace

William Donald Schaefer, Governor

STATEMENT

on

DRUG & ALCOHOL POLICY AND EAP PROGRAM TARGETED TO ASSIST SMALL BUSINESSES

by

Harold C. Green, President
Chamberlain Contractors, Inc.
March 8, 1991

Mr. Chairman and members of the Subcommittee - Good Morning! My name is Harold C. Green, President and principal owner of Chamberlain Contractors, Inc., a paving contractor specializing in parking lot maintenance.

In 1976, at the age of 19, I started Chamberlain Contractors with two employees and a pickup truck, and over the past 15 years, have grown the business to a point where we presently employ 75 people on a full-time basis and do work in the Maryland, D.C. and Northern Virginia markets.

On behalf of my company, I thank you for the invitation to speak before this Subcommittee. In response to your questions, I have prepared answers that I would like to now read before this committee.

In the mid 1980's Chamberlain Contractors became acutely aware of disturbing trends in employee job performance and quality control issues. Between 1983 and 1986, Chamberlain saw significant increases in both our Worker's Compensation rate and general liability insurance. These increases, which were in excess of 100% over a three year period, were having a negative impact on our bottom line and were the single largest annual cost increases that the company was experiencing. In addition, the two principal owners were constantly barraged with employee related problems dealing with personal finances and/or family matters. On any given Friday, between 2:00 & 5:00 p.m., we might have to meet with a half dozen employees to lend money or address a family problem.

At a certain point in time, my partner and I became aware that we were playing God with people's lives and if we decided not to help them on any given day, we could adversely impact their lives or enable the behaviors that were occurring to repeat themselves. As a result, our business was in a state of crisis as we were not controlling our employees on their job performance but rather were reacting to their individual circumstances without any specific direction. Our business needed help yet we had no known direction to turn.

So, in 1986, our first suggestion to start to deal with this problem was to implement a Safety Awareness Program to help reduce the frequency of work and vehicular related accidents. By making all employees aware of safety in the workplace, we started to immediately see a significant decrease in the frequency of Workmen's Compensation claims and vehicular accidents. Unfortunately, we still faced significant employee turmoil that started to impact the business relationship between the two principal owners.

Then in late 1987, Chamberlain Contractors took the next step by addressing the possibility of writing a drug & alcohol policy. Because of our significant exposure in using heavy equipment and trucks that operate around the Washington/Virginia beltway, we felt it absolutely essential to put in place a drug & alcohol policy to lower our risk for possible accidents and to hire the highest quality employees possible for the various job positions available.

Unfortunately, there were no federal, state or local agencies that had any knowledge whatsoever in helping us address how to write a drug & alcohol policy or implement such a program. I personally contacted at least a half dozen federal agencies, including the Small Business Administration, to ask for their assistance in helping us tailor a specific program to serve our needs. They were frank in telling me that they had no idea what I was talking about or what I needed. As a result, Chamberlain Contractors negotiated with a local consulting firm to help write a drug & alcohol policy for our company. This undertaking occurred in 1988 at a cost of between $5000 and $10,000.

During 1988, Chamberlain had four meetings with all the employees to discuss openly the issues of drug & alcohol use in the business and how it was essential that we implement a drug & alcohol policy. We worked through the company's human resource advisory group to have them support the idea of implementing such a program.

Unfortunately, at that point, we were unaware of the fact that just because a company elects to design a drug & alcohol policy, that suddenly all the problems associated with these negative behaviors cease to exist. Rather we quickly found out in the discussion process that those employees who had job performance problems needed a mechanism to deal effectively with those problems so that they could return to the company and be more productive.

The EAP program was presented by our consultant to Chamberlain Contractors as the model to help improve job performance of all the employees. Since implementing our EAP program, at a cost of approximately $7000/year, we have seen a marked decrease in job related injuries, accidents, increases in quality workmanship, lower absenteeism and tardiness and a significant decrease in our insurance costs on the magnitude of $50,000 per year. These are some of the benefits Chamberlain has realized by taking the necessary time and effort to develop an EAP program.

What is incredible about this program is that the employees support it completely. I offer as evidence to the Subcommittee copies of our Policy & Procedures Manual and the Drug & Alcohol Policy which show how we have integrated these policies into the daily operations of our company. Today we no longer face crises in human resource management issues. Today we manage job performance and plan for the future needs of our business.

Those employees who have faced the fact that drugs and alcohol have impacted their job performance have had to make the difficult decision of whether they wish to address those problems in their life and find solutions or lose their job. In 90% of the instances, the employee has dealt with his or her cocaine, alcohol or financial problem to become a healthy citizen in the community and a valuable employee here at Chamberlain Contractors.

I want to make aware to the Subcommittee how important it is for the principal owners of a business to support an EAP program. If the owners are not 100% behind the implementation and management of the program, it will not be successful. If management elects to make exceptions to the rule, it will not be successful. If management expects immediate results from the implementation of the program, it will not be successful. This is a long term program that will benefit both employees and employers and provide a competitive advantage to those businesses who implement such a program.

I have determined that in hard dollars, Chamberlain Contractors probably saves in excess of $60,000 per year plus immeasurable additional dollars from customer satisfaction, quality workmanship and the lack of "go backs" on jobs already completed. The cost to implement such a program on an annual basis for my firm is between $7000 and $9000 and I believe that those are extremely cheap dollars to have such a positive impact on my employees and customers.

I would like to add that all of these cost savings and benefits that Chamberlain has reaped would not have been possible had Congress not enacted the Drug-Free Workplace Act and required Department of Transportation drug testing. This legislation allowed Chamberlain Contractors the muscle to implement a comprehensive drug & alcohol policy and administer a program to help those people who needed help.

I hope that this Subcommittee will look carefully at ways to encourage businesses to consider implementing an EAP program. By doing so, not only will the employer be helping his employees become more productive citizens in the community, but he will tend to stay employed with a company for a longer period of time.

I hope Congress and this Subcommittee in particular will support the efforts of non-profit organizations like CADA (Corporation Against Drug Abuse) whose sole purpose is to get the word out to small business owners to educate them as to how they can have a healthier, stronger and more profitable business.

I want to thank you Mr. Chairman and the members of the Subcommittee for allowing me an opportunity to express my views. I know this issue has transformed my business from just a run of the mill paving contractor in the Washington market to a paving contractor who sets the performance standard for the industry in the Washington market.

Thank you!

CHAMBERLAIN CONTRACTORS, INC.

POLICY CONCERNING ALCOHOL AND OTHER DRUGS

AUGUST 18, 1989

Chamberlain Contractors, Inc. is committed to the maintenance of a safe and drug free work place for all employees. Chamberlain is also committed to the enhancement of the quality of life for all employees, their families and the larger community. In keeping with this commitment, Chamberlain has adopted this policy concerning alcohol and other drugs. Through the implementation of this policy, by both management and staff, it is our goal to insure the reputation of the Company and its' employees and to provide assistance toward rehabilitation for any employee who seeks help in overcoming difficulties with alcohol or other drugs.

1. **PURPOSES**. The purposes of this policy are as follows:

   (a) to establish and maintain a safe and healthy working environment for all employees;

   (b) to insure the reputation of the Company and its employees;

   (c) to reduce the incidence of accidental injury to person or property;

   (d) to reduce absenteeism, tardiness and indifferent job performance;

   (e) to provide assistance toward rehabilitation for any employee who seeks the Company's help in overcoming any addiction to, dependence upon or problem with alcohol or other drugs, thereby enhancing that employees quality of life on and off the job.

2. **BENEFITS; INCONVENIENCE; COOPERATION**.

   Those employees with drug and alcohol abuse problems make up only a small fraction of the work force, and the Company regrets any inconvenience that may be caused the many non-abusers by the problems of the few. It is believed, however, that the benefits to be derived from the reduction in number of accidents, the greater safety of all employees, and the rehabilitation or termination of those who, because of alcohol or other drugs, create an unsafe work environment, will more than make up for any inconvenience or loss the rest of us must be subject to. The Company earnestly solicits the understanding and cooperation of all employees and employee organizations in implementing the policies set forth herein.

3. **DEFINITIONS**.

(a) **alcohol or alcoholic beverage** - means any beverage that may be legally sold and consumed and that has an alcoholic content in excess of .5% by volume;

(b) **drug** - means any substance (other than alcohol) capable of altering the mood,

(c) **prescribed drug** - means any substance prescribed for the individual consuming it by a licensed medical practitioner;

(d) **illegal drug** - means any drug or controlled substance, the sale or consumption of which is illegal;

(e) **he or his** - also means "she" or "hers" in appropriate context.

4. **EMPLOYEE ASSISTANCE PROGRAM**.

(a) Any employee who feels that he or she has developed an addiction to, dependence upon or problem with alcohol or other drugs, legal or illegal, is encouraged to seek assistance. Assistance may be sought by writing in confidence to, or asking for a personal appointment with, Daniel Shaw, Vice President.

(b) Each request for assistance will be treated as confidential by the executive receiving it and only those persons "needing to know" will be made aware of such request.

(c) Daniel Shaw, Vice President, in conjunction with the company employee assistance provider, will be responsible for developing contacts with local hospitals and community organizations offering alcohol or drug treatment programs (e.g., Care units, Alcoholics Anonymous, Narcotics Anonymous, Community Health Centers, etc.) and for referring employees seeking assistance to an appropriate treatment organization.

(d) Rehabilitation itself is the responsibility of the employee. Any employee seeking medical attention for alcoholism or drug addiction will be entitled to benefits under the Company's group medical insurance plans on the same basis and with the same restrictions and limits as for other illnesses. For employees enrolled in a formal treatment program, the Company will grant one time rehabilitation leave on the following basis:

(1) Up to 30 days - one half base pay;

(2) Up to an additional 60 days - one quarter base pay;

(3) With physicians and other professionals continued input with CCI representatives on a weekly basis.

(4) If an employee problem creates a potentially life-threatening situation (e.g. driving a vehicle), CCI management will decide whether the employee can continue in his/her current job assignment. Reassignment or termination may be required.

(5) To be eligible for continuation in employment on a rehabilitation pay basis, the employee must have been employed for at least two continuous seasons; must maintain at least weekly contact with the executive to whom he reports; and must provide certification that he is continuously enrolled in a treatment program and actively participating in that program. Benefits, as described above, will continue during seasonal layoff periods. Employees who have successfully completed a 90-day probationary period but who do not meet the two year employment requirement, will be eligible for rehabilitation leave on a non-pay basis.

(e) Upon successful completion of treatment, the employee will be returned to active status without reduction of pay or seniority.

5. REJECTION OF TREATMENT - FAILURE OF REHABILITATION.

Any employee suffering from an alcohol or drug problem which has adversely effected their work performance, who rejects treatment or who leaves a treatment program prior to being properly discharged may be terminated from employment. Chamberlain Contractors reserves the right to terminate any employee based upon poor work performance or other work-related problems. No employee will be automatically eligible for this Employee Assistance Program more than one time. Eligibility beyond the first occurrence will be at the discretion of Chamberlain Contractors.

6. **ALCOHOLIC BEVERAGES**.

(a) No alcoholic beverage will be brought into or consumed upon Company premises.

(b) Drinking or being under the influence of alcoholic beverages while on duty is cause for termination.

(c) Any employee whose off-duty abuse of alcohol results in excessive absenteeism or tardiness or is the cause of accidents or poor work performance will be referred to the Employee Assistance Program for rehabilitation. If the employee refuses or fails rehabilitation, he/she shall be terminated.

7. **PRESCRIPTION DRUGS**.

(a) No prescription drug shall be brought upon Company premises by any person other than the person for whom the drug is prescribed by a licensed medical practitioner, and shall be used only in the manner, combination and quantity prescribed.

(b) Any employee whose abuse of prescription drugs results in excessive absenteeism or tardiness or is the cause of accidents or poor work performance, will be referred to the Employee Assistance Program for rehabilitation. If the employee refuses or fails rehabilitation, he/she shall be terminated.

8. **ILLEGAL DRUGS**.

(a) The use of an illegal drug or controlled substance or the possession of same on or off duty is cause for termination.

(b) The sale, trade or delivery of illegal drugs or controlled substances by an employee to another person is cause for termination and for referral to law enforcement authorities.

(c) The "occasional", "recreational", or "off-duty" use of illegal drugs will not be excused. The Company's experience in recent years indicates that employee involvement with illegal drugs, even "recreationally", may be expected to result in:

(1) Accidents;

(2) Financial and domestic difficulties and, as a result:

  (i) unstable performance
  (ii) theft

(3) Decreased work performance due to:

  (i) arrests of employees
  (ii) poor customer relations, short tempers, etc.

(4) A growing ring of drug use as users supply others.

9. EMPLOYMENT OF PERSONS ADDICTED TO OR DEPENDENT UPON ALCOHOL OR DRUGS.

(a) A person presently using illegal drugs or having a history of alcohol or drug dependency will not be knowingly employed unless there is evidence of rehabilitation satisfactory to the Company.

(b) All applicants for employment will be required to take a pre-employment physical examination including a urinalysis and/or blood test. Applicants will be required to pay one-half the cost of this examination. Applicants whose examinations and interviews, combined with general reference background checks, indicate present alcohol or other drug abuse will not be hired.

10. SAFETY OF WORK FORCE; WORK RULES; BLOOD AND URINE TESTS.

(a) In order to insure the safety of the work place and the work force, the following work rules will apply to all employees effective upon receipt of notice of this policy.

(1) Each employee, as a condition of continued employment, will be required, upon request of Company supervisory personnel and with reasonable cause to:

  (i) submit to search of any vehicle brought upon or parked upon Company premises;

(ii) submit to search of any pocket, package, purse, briefcase, tool box, lunch box, or other container brought upon Company premises;

(iii) submit to search of desk, file cabinet, etc.

(b) Each employee, as a condition of employment will also be required, upon request of Company supervisory personnel, to submit to blood and/or urine tests for determining use of alcohol and/or other drugs.

(c) Each employee, as a condition of employment will also be required, from time to time, to supply the form of "Certification and Declaration" that illegal drugs are not being used, attached as Exhibit "A".

(d) Employees operating vehicles and other equipment involved in accidents or otherwise involved in unusual incidents that result in damage to an automobile, result in bodily injury or result in material or property damage in excess of $1,000 will be tested.

11. EFFECTIVE DATE - NOTICE TO EMPLOYEES - STATE LAWS.

(a) The policies set forth in this Policy Guide are effective immediately upon notice to employees. Each present employee will be furnished a copy of this policy and will sign a receipt for same. Newly-hired employees will each be furnished a copy before hiring.

(b) These policies will be implemented in a manner that will comply with all applicable federal and state laws.

12. CONFIDENTIALITY.

The results of all physical examinations, blood and urine tests and treatment records will be treated as confidential. Disclosure will be made only upon the written request of the employee or as required by a court order or state or federal law.

CERTIFICATION AND DECLARATION

I have been provided a written copy of the Chamberlain Contractors, Inc. Policy Concerning Alcohol and Other Drugs. I am aware that this policy forbids the use of or dealing in illegal drugs, on or off duty, and that violation of this policy is cause for termination.

(Date)	(Signature)

CHAMBERLAIN
Contractors, Inc.
"Parking Lot Specialists"

Dear Fellow Employees:

We are happy to present you with the Employee Manual Policies & Procedures which contains valuable information for each of you as a member of Chamberlain Contractors, Inc.

Please read the enclosed information as it is for your benefit, safety and well being.

We sincerely hope you will become familiar with your employee benefits package and will share this information with your family.

Sincerely,

CHAMBERLAIN CONTRACTORS, INC.

Harold C. Green
President

HCG/dpf

1990

CHAMBERLAIN CONTRACTORS, INC.

EMPLOYEE MANUAL

POLICIES & PROCEDURES

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A. INTRODUCTION AND MISSION STATEMENT

Welcome to Chamberlain Contractors, Inc. As an employee of Chamberlain, you will be a valuable part of our team. Our goal at Chamberlain Contractors, Inc. is to provide parking lot repair services at the highest possible level of quality. We are not purely a construction company, but a service organization that strives to service the needs of, and solve the problems of, our customers.

The owners believe that interaction in every aspect of the business is essential to communicating with employees and keeping the company operating smoothly. As a general rule, Harry will handle sales and marketing, research and development, and corporate financial considerations. Dan will handle production and employee issues.

B. HISTORY OF CHAMBERLAIN CONTRACTORS, INC.

Chamberlain Contractors, Inc. was founded by the current President, Harold Green, in September of 1976. At that time, he had been working in the field of parking lot striping and wanted to go into business for himself. The company was started with a striping machine, pickup truck and very little working capital.

In September 1978, Dan Shaw, the current Vice-President, bought into what was then a small striping, seal coating, and asphalt patching business. The company has grown steadily since then and added the services of asphalt paving, concrete, excavation, geotextile fabrics, sweeping and milling.

The company grew to its current size in late 1984. At that time, a plan went into effect to modernize the fleet of trucks and equipment and to stabilize the base of the organization. An emphasis has been made on retaining key members of the Chamberlain staff.

Today, Chamberlain Contractors, Inc. is a very stable organization that is perceived by people in the marketplace as a leader in our industry. At this point in time, we feel that our team of employees is the #1 asset of the company. By working together, everyone here can share in a prosperous future for themselves and Chamberlain Contractors.

C. YOU AND YOUR JOB

1) Your Job

Every job affects our ability to produce a quality job at a competitive cost, and upon our providing customers with prompt service to meet their needs. To accomplish this, each of us must always seek ways and means of improving the performance of all of our activities. As a result, your input of ideas is always appreciated.

2) Quality is Everyone's Job

To remain a leader in the parking lot maintenance industry, we must provide the highest quality workmanship every day that we go out in the field. The results of a quality job are a shared responsibility of the company and you - the employee. Your effort, knowledge, care and pride in performing your job correctly are our greatest assets.

3) Safety

As important as our concern for quality is our concern for maintaining a safe work environment. The potential for work related injuries is great, and it is imperative that employees act with common sense, good judgement, and foresight towards the welfare of all personnel and maintenance of equipment. It is an ongoing process that requires continuous monitoring, and therefore a program, which is outlined in Section K.

4) Drug and Alcohol Policy

Drinking of alcoholic beverages or use of drugs on company time or in company vehicles or on company premises will not be acceptable. The safety and well being of everyone within the company depends on this and is outlined in the drug and alcohol policy in Section L.

5) Probation Period

New employees will be hired for a (90) calendar day probation period. They will be considered a regular employee or released at the end of (90) days. Release may be earlier, if in the opinion of the supervisor, the new employee is not acceptable for the job. The probation period may be extended under mutual agreement for further evaluation.

D. COMPENSATION

1) Pay Period

Our pay period will run from Saturday morning at 12:01 a.m. through Friday midnight.

2) Pay Day is Every Friday

The pay you receive on pay day is for the previous week, rather than the current week. You will receive your first paycheck at the end of your second week. Your paycheck lists your hourly or weekly rate, total earnings, and all deductions. You will receive your paycheck from your supervisor, and it will not be given to anyone else without your prior permission. Paychecks will be distributed at the end of your work shift on Friday.

3) Reporting of Hours

Crew employees' time will be recorded by their foreman. All other employees' time will be reported by a time clock located in the employees' office. If time is not recorded, payment will not be made. Any discrepancy in your pay should be discussed with your foreman. Crew employees will be paid on the basis of job time plus one hour (as an allotment for travel time). Those hourly individuals who drive any type of vehicle will punch the time clock and be paid accordingly.

4) Overtime Pay

Anything over 40 hours during a weekly pay period for hourly employees only will be considered overtime. For overtime work, you will receive one and one half (1-1/2) times your base rate of pay.

5) Pay Increases

Your supervisor should evaluate your job performance, attendance and attitude at the end of your first (90) days of employment and may increase your pay at that time, subject to approval by the owners.

Employees will receive one review period at the beginning of the work season. Pay increases will be implemented when warranted.

6) Showup Time

Employees will be given one hour showup time for appearing at the specified time and being unable to work due to inclement weather, etc. You will be required to remain in the yard at least one hour and then will be told to go home or go to jobsite. Just showing up and then immediately leaving the premises does not justify showup pay.

7) **Earn Extra Money - Spread the Good Word**

If you provide us with a good lead that results in Chamberlain getting a job with a new customer, you will receive a 2% commission on the total price of the job. Just give Harold a name and phone number and we will do the rest.

E. BENEFITS

1) Employee Assistance Program

As a benefit to you the employee, Chamberlain Contractors, Inc. has employed an outside agency to run our Employee Assistance Program (EAP).

Our EAP provider is a counseling service that is provided for your use, free of charge. The benefits of the EAP are two-fold:

a) You may contact the EAP provider at your convenience to discuss any personal problems you feel you need counseling on. These can be work related problems, personal or family problems, financial problems, or problems relating to addictions to drugs or alcohol. The program is also available for your spouse to use at no cost.

b) The EAP is also used as a disciplinary tool to allow employees the opportunity to address problems before they result in job termination. We at Chamberlain Contractors value our current employees very highly and want to make every attempt to keep you on board. This means giving you a chance to address your problems that can affect job performance through the EAP provider.

Individuals who have been employed at Chamberlain a minimum of (90) days will be entitled to use this program at no cost.

Our EAP provider is Montgomery General Hospital. Nicodemos Gayle can be reached at 774-8898. Please consult your EAP pamphlet.

2) Worker's Compensation Insurance

Our company maintains Worker's Compensation Insurance for all employees. If you are injured as a result of your job, you must notify your supervisor the day of the injury. Report all injuries, no matter how slight. Failure to report injuries timely may result in a loss of benefits.

3) Group Health Insurance

Group health insurance is available to all employees upon request. In order to receive group health insurance without undergoing an application process, you must enroll in the plan at the time you begin employment at Chamberlain.

4) Hourly Employee Benefits

Benefits for hourly employees will be as follows:

The following is a list of benefits that are available to all hourly employees. Benefits earned each year will be added to benefits earned in all previous years.

YEAR #1 - Any employee who works 1000 hours or more will be eligible for our Pension/Profit Sharing Plan. In years when Chamberlain is profitable, a portion of the profits will be divided under a government approved plan to all eligible employees. This starts in the first year of employment. You will receive a Profit Sharing Certificate after the end of the second year you are eligible.

Everyone will be required to wear company uniforms. Chamberlain will pay half the cost of the uniforms. Jackets and coveralls are extra.

YEAR #2 - Chamberlain will pay the full cost of your uniforms. You will receive (1) paid vacation day.

YEAR #3 - You will receive (4) paid holidays. They are Memorial Day, Fourth of July, Labor Day, and Thanksgiving. You must work the day before and the day after (work days) unless there is notice given in advance (on proper form) and approved by your foreman and employer.

YEAR #4 - You will receive (1) additional vacation day. Total of (2).

YEAR #5 - You will receive (1) additional vacation day. Total of (3).

YEAR #6 - You will receive (1) additional vacation day. Total of (4).

YEAR #7 - You will receive (1) additional vacation day. Total of (5).

YEAR #8 - You will receive (1) additional vacation day. Total of (6).

YEAR #9 - You will receive (1) additional vacation day. Total of (7).

YEAR #10 - You will receive (1) additional vacation day. Total of (8).

YEAR #11 - You will receive (1) additional vacation day. Total of (9).

YEAR #12 - You will receive (1) additional vacation day. Total of (10).

YEAR #13 - You will receive (1) additional vacation day. Total of (11).

YEAR #14 - You will receive (1) additional vacation day. Total of (12).

YEAR #15 - You will receive (1) additional vacation day. Total of (13).

YEAR #16 - You will receive (1) additional vacation day. Total of (14).

YEAR #17 - You will receive (1) additional vacation day. Total of (15).

Up to (6) weeks of vacation may be carried over. Only (2) weeks may be used consecutively, however, unless due to illness. Only (1) week may be used between April 1st and December 1st, unless due to illness.

All accumulated benefits will continue as long as employment with Chamberlain continues.

5) **Foremen, Office and Salaried Employee Benefits**

Benefits for foremen, office personnel and other salaried employees will be as determined by the individual Employment Memorandum or Employment Contract.

6) **Sick Leave**

Those employees eligible for sick days will get (4) per calendar year. Sick days are earned at the rate of (1) per quarter during that calendar year. (i.e. at the end of March, employee will be eligible to use (1) sick day) If (3) or more sick days are used consecutively, a doctor's note will be required. If no doctor's note is provided, the third and subsequent days of the absent period will be charged to the employee in the form of vacation days or docked pay. Sick days may be carried over to the following year if not used. Each employee may carry up to (10) sick days on the books at any one time.

7) **Vacation**

Vacation days are awarded on a calendar year basis and are earned during the calendar year for which they are to be taken. (i.e. If you are to receive (4) vacation days during the calendar year, (1) day is earned and may be taken per quarter. If you are to receive (8) vacation days during the year, (2) are earned and may be taken per quarter. No more than (5) consecutive vacation days may be taken between April 1st and December 1st. You may carry vacation days over from one year to the next. A maximum of (6) weeks may be carried at any one time. Only two weeks may be used consecutively, however, unless due to illness.

8) **Holidays**

Hourly employees that are eligible for holiday pay will be paid for the (4) holidays during the season. These holidays include Memorial Day, Fourth of July, Labor Day and Thanksgiving. Year round employees will be paid for these (4) holidays plus the day after Thanksgiving, Christmas and New Years Day. You must work the day before and the day after (work days) unless there is notice given in advance (on proper form) and approved by your foreman and employer, or holiday pay will not be given.

9) **Company Vehicle**

Company vehicles will be issued to all estimators and foremen as a company benefit. These vehicles will be for use as transportation to and from your job at Chamberlain Contractors only. This means no use of the vehicle after work or on weekends, unless performing weekend work. Damages for accidents occurring during unauthorized use of the vehicle will not be covered under Chamberlain's insurance policy and will be the responsibility of the person the truck is issued to. Special permission may be granted to use the vehicle other than commuting, but that must be given by owners in writing, and will require monetary compensation to cover insurance expenses.

10) Emergency Loan Policy

Employees may borrow up to one week's earned pay in advance. This amount will then be deducted from the following Friday's paycheck in total. Only one loan per employee per half calendar year will be allowed.

F. ATTENDANCE

Regular attendance is extremely important to the efficiency of our operation and the security of our jobs. It is the responsibility of each and every employee to report regularly for work and at the proper starting time. Employees with good attendance will be the first selected for work during slow times.

1) Transportation

It is everyone's responsibility to arrange their own transportation to and from work. It is not Chamberlain's or any foreman's responsibility to pick up anyone and bring them to work. This may be arranged, however, if it is convenient to all parties involved.

2) Excused Absence

Absences will be considered excused under the following conditions:

a) Prearranged

Any absence that is prearranged and agreed to by your supervisor is excused, at least (48) hours notice is required. In this instance, an Absence Form must be filled out and signed by the supervisor and turned in to the office.

b) Medical

If you are sick, and call in prior to your regular starting time, the absence is excused. If illness lasts more than (2) days, a doctor's note will be required for the absence to be considered excused. You personally must call in prior to your starting time and report the illness to your supervisor or the dispatcher; not your spouse or mother. If you are too sick to call in at the reporting time, and someone else calls for you, you must then personally call by noon in order for the absence to be excused.

c) Personal Reasons

Most absences for personal reasons can be prearranged and will fall under paragraph (a). Emergencies such as a sudden death in the family can cause a need for a day off. This type of absence is excused if the employee personally calls in before reporting time to his or her supervisor.

3) Unexcused Absence

Absences under circumstances other than those mentioned in paragraph (2) above are unexcused. Repeated unexcused absences will not be tolerated and will be dealt with under Section J.

4) Tardiness

Tardiness will be treated the same way as absence. Repeated unexcused tardiness will not be tolerated and will be dealt with in Section J.

G. WORKING TOGETHER

1) Telephone Calls and Messages

When an employee is called on the phone for personal business, it disrupts his work and the work of the person answering the phone. For this reason, personal calls will not be accepted by the receptionist, except in the case of an emergency; at that time, the person calling may be expected to identify himself or herself and the nature of the emergency.

2) Solicitations/Contributions

In order that no one interferes with another employee's work, no personal business or solicitations of any kind may be carried on by an employee during his or her working time. For the purpose of this article, "working time" does not apply during break periods and meal times, or other specified periods during the work day when employees are properly not engaged in performing their work tasks. In addition, there shall be no distribution of literature in any work area at any time.

3) Bulletin Boards

Bulletin boards are provided at various locations in the office to keep you informed of special announcements and events. It is recommended that you review the boards on a daily basis. Use of the bulletin board for personal reasons will not be allowed, except with the consent of the office manager.

4) Suggestions

Suggestions and recommended solutions are welcome. These should be written out and deposited in the suggestion box or turned in to the dispatcher. The company is genuinely interested in your ideas and suggestions for improvements in all areas. Please let us know about your ideas.

5) Cleanliness

A clean working environment and work force is essential for safety and for upholding the image our customers expect. Each employee is responsible for the cleanliness of his assigned equipment. Maintaining a clean office and yard is everyone's responsibility. Maintaining a good personal hygiene is also your responsibility. Part of cleanliness is wearing a clean uniform, looking sharp and being healthy.

6) Pollution

Stopping the pollution of our environment is everyone's responsibility. In our type of business, there are certain materials that we use frequently that must be handled carefully if we are not to pollute. We have means for taking the spoils of most materials to recycling stations or, if not, then disposing of them properly. It is our policy never to dump any polluting chemicals directly into waterways or onto the ground. If there is any question about procedure, consult with the dispatcher.

H. RULES & REGULATIONS

1. General

1) Employees are not permitted in the main office. Anyone who has a problem or questions should report to their supervisor or foreman for appropriate action. Access to the main office personnel shall be through the dispatcher only.

2) Foremen only are permitted to use the foremen's office - no one else.

3) Locker room will be opened by dispatcher at designated times only. The employees' office, consisting of time clock room and bathroom, may be used for restroom facilities and to write reports only. Employees are responsible for maintaining cleanliness of the bathroom facilities.

4) Employees will not be permitted to hang around in the shop area. The covered area with a pay phone has been constructed to provide cover when waiting for rides, etc.

5) Company telephones are not available for use other than strictly for company business and by foremen, shop personnel, estimators and office personnel only. This also applies to foremen's cellular phones. No personal calls.

6) Wearing of uniforms is a requirement for everyone employed at Chamberlain. Chamberlain will pay 50% of uniform costs the first year and 100% thereafter. Jackets and coveralls will not be paid for by Chamberlain, but are available at employee's expense.

7) Certain pieces of equipment will be assigned to employees. An Equipment Checklist must be filled out completely and submitted on Friday afternoon for that piece of equipment prior to issuance of the employee's paycheck. Forms should be turned in to the dispatcher.

8) Employees must provide their foremen with the necessary daily reports and vendor tickets to substantiate labor and material usage. Failure to provide the information will delay distribution of a person's paycheck until information is updated. Worn out tools are to be turned in for replacement with new tools.

9) There will be no private use of company equipment or vehicles, including use of the shop unless special permission is granted by Dan or Harry in advance.

10) Employees will be held responsible for tools, vehicles, equipment or materials that are lost or damaged due to their negligence or irresponsibility. In this instance, an appropriate amount will be deducted from the employee's weekly pay.

11) All employees will maintain and run equipment in a proper manner. There will be no tolerance for neglect of equipment (i. e. oil check, air in tires, cleanliness of machine).

12) All accidents must be reported as soon as they happen. Accident Report Forms should be kept in all vehicles at all times and must be filled in completely if you are involved in an accident. Driver will be responsible for paying $250.00 deductible on all accidents determined to be his/her fault. Amount will be higher if accident not reported within (12) hours of its occurrence or when gross negligence or misconduct has caused the accident.

13) All personal injury accidents must be reported immediately to foreman or supervisor on the job and a form must be filled out. Failure to report injuries immediately may result in denial of insurance coverage.

14) All vehicles and equipment will be fueled in the evening and parked in designated spaces. Gas pumps will not be turned on in the mornings or during the day.

15) Theft will not be tolerated. Theft can take many forms besides cash - such as reporting time not worked, using company equipment for personal gain, taking company materials, etc. Theft will result in disciplinary action measured by the severity of the act itself.

16) All purchases and equipment rentals must have a Purchase Order. Any materials bought without a Purchase Order will be paid for by the responsible party. Each Purchase Order must have the unit number and/or job number to charge to and can be gotten from the dispatcher. Receipts must be turned in to the office daily. Once finished with rental equipment, it is the individual's responsibility to return it. Any excess cost due to lack of returning rented materials will be charged to the individual who rented them.

17) It is required that boots be worn on the job at all times. These are to be provided at the employee's expense. Personal safety items such as earplugs, masks and goggles will be provided by Chamberlain. Concrete boots will be provided for the concrete crew. Other items such as gloves must be provided at the employee's expense.

18) Parking lots are provided for your use. When parking, please use only the required amount of space and be considerate of your fellow employees by not blocking them in. Do not park in the spaces reserved for others.

19) Once daily work is completed, employees are to vacate premises. Do not "hang around" after hours. This is a place of business. Socializing is to take place elsewhere.

20) If any fuel is spilled in the yard, it must be cleaned up immediately with oil absorbent from the shop. Once the oil absorbent has performed its job, it should be swept up and disposed of properly. If a major spill

happens, notify the dispatcher and the shop immediately for proper clean up action.

21) Rain suits will be issued upon request. You must pay for suits that are lost or mutilated.

2. Rules & Regulations for Drivers

1) Each employee who drives a vehicle must have a valid driver's license for that type of vehicle. Prior to being hired to operate that vehicle, license will be checked by the management of Chamberlain Contractors, Inc. It is the employee's responsibility to maintain a valid license thereafter. Repeated violations or poor driving habits will jeopardize your ability to drive and, therefore, your employment.

2) Check oil and tire pressure every morning. Check rear, transmission and other fluids every week.

3) Write down necessary repairs to your vehicle on proper form. Minor problems not reported which create a costly major repair may cost you money or your job. Pre-trip Inspection Forms must be filled out and turned in. A copy is to be kept in the truck. No unsafe vehicles are to be operated on the street.

   Pre-trip Inspection Forms for vehicles over 26,000 lbs. must be turned in daily. Pre-trip Inspection Forms for vehicles under 26,000 lbs. must be turned in weekly (Friday afternoon).

4) When pulling a trailer, compressor, tack wagon or other unit, always hook up safety chains and put a pin through the hitch. Anyone pulling a trailer or piece of equipment is responsible for checking for proper tags, tires, fuel, etc. (Start it up in the yard to make sure it is running properly before taking it to the job.) Do not pull item over 50 mph on highway.

5) All accidents must be reported as soon as they happen. Accident Report Forms should be kept in all vehicles at all times and must be filled in completely if you are involved in an accident. Driver will be responsible for paying $250.00 deductible on all accidents determined to be his/her fault. Amount will be higher if accident not reported within (12) hours of its occurrence or when gross negligence or misconduct has caused the accident.

6) Any moving violations must be reported as soon as they happen (within (48) hours), even if no damage has occurred. You must fill out a "Notice of Traffic Violation" form that can be obtained in the office.

7) Any vehicle in the yard by 5:30 p.m. is to be washed. In any event, all vehicles are to be washed at least once a week. Two hours will be allotted each week for the driver to maintain and wash the vehicle.

8) All vehicles will be fueled in the evening, and equipment parked in designated spaces. Gas pumps will not be turned on in the mornings. Fuel log must be filled in correctly and legibly.

9) Windows are to be rolled up and truck locked every night. Keys are to be put in the key box in the employee's office every night. You are responsible for truck and equipment, tools, etc. on that truck.

10) Turn off two-way radio at night. Turn on first thing in the morning.

11) Clean out interiors of trucks every day. Trash cans are provided in the yard.

3. Rules & Regulations Specifically for Dump Truck Drivers

1) All truck drivers are crew members when at the jobsite. The foreman on that job is your boss.

2) Pin up mud flaps when backing into paver to avoid tearing them off.

3) Put truck number on dump tickets and give to foreman. Asphalt tickets are to be given to the foreman on the job site you are working on.

4) Sleeping in your truck is strictly prohibited.

5) Slack times on the jobsites should be used to maintain your vehicle. Keep alert and be ready to move your truck when the foreman calls for you.

6) Dump all loads off prior to leaving at the end of the day.

7) Leave dump bodies slightly raised and chocked to prevent rust from rain.

8) Do not carry diesel fuel or other oil base products in cabs.

9) Do not hook up any extra radio equipment in the truck. Your eyes should be on the road and your ears tuned to company two-way radio. Damage resulting from incorrect wiring or holes in dashboards will be charged back to the driver.

4. Foremen's Duties & Responsibilities

1) Instructions for the day's work will be found in your individual boxes in your office each morning, along with any P. O.'s or checks needed for materials, rental equipment, etc., for that day's work.

2) Foremen's Reports are to be completely filled out and put in your box in your office at the end of each day, along with receipts for materials, etc. that you used. A Daily Report for each job must be submitted.

3) A Time Book is provided to keep track of you and your crew's time and must be turned in to dispatcher on Friday when picking up paychecks. There are no exceptions to this Friday rule. Your Time Book should agree with your daily Foremen's Reports and daily time sheet call-ins. If they do not match, employee will receive the lower amount of hours. Office staff cannot be held responsible if Foremen do not fill out Time Books correctly. It will be the Foreman's responsibility to explain why an employee's hours are wrong and make him/her happy.

4) Crew drivers will be paid from the time they leave the yard until the time their truck is parked. They will be required to punch the time clock. Foremen are to oversee this to make sure hours are correct. All other employees will be paid job time plus (1) hour for travel time.

5) Foreman are to check in with dispatch every day when, 1) leaving the yard, 2) arriving at the job site, and 3) when leaving the job site. These times will be recorded by the dispatcher and compared to daily Time Book. Also, check in around midday to report job status and receive instructions.

6) Should someone not normally on your crew be working with you, his name and hours must be reported on your daily Foremen's Report and in your time Book for that day. If you do not know his name, ASK HIM! (First and last name)

7) The dispatcher has Job Acceptance forms which you are to have signed by the customer when each and every job is finished. You are to fill in top of form.

8) You are responsible for the check(s) and receipts for materials, etc., and if a check is not used, it must be returned to the dispatcher.

9) There will be NO non-compacted subgrades from now on. Those foremen that require a plate compactor will have one assigned and it will be their responsibility to make sure it is in working order at all times. Should it be in the shop for repairs, you will rent one to take on the job. Do not wait until you go to use it to find it needs repairing or the cost of renting one will come out of your pocket.

10) Should we be unable to work due to inclement weather, etc., it is your responsibility to see that any of your crew's (1) hour showup time be utilized in the yard or shop.

11) Foremen will have (3) free rain days during the year (1/1 - 12/31). You must come in for work at your regular time and may then decide to go home. After the (3) days, you will be required to put in normal working hours doing projects for the remaining rain days in the year. These may not be carried forward from year to year. The (3) free days may be selected by each individual foreman as he/she chooses.

12) Foremen will be required to investigate all accidents involving their crew or jobsite and fill out appropriate paperwork, including an "Accident Investigation Report" fully.

13) You are responsible for hiring and firing your own crew and for enforcing company rules. However, you must have final approval in writing from Dan and Harry on the hourly wage you want to pay an individual. Do not make promises we can't keep. You are to fill out Cover Form for each person hired.

14) Each foreman is responsible for keeping the vehicles, equipment, and yard clean. Your crew should understand that the yard is to be well maintained, vehicles and equipment clean inside and out, and parked properly.

15) The foremen's office is not to be used as a gathering place for crew personnel. The object of this area is for foremen to fill out their paperwork and set [illegible] next day's jobs. Dispatch office is off limits. Drivers should fill out paperwork during the day and therefore not need to hang around in the office. You are responsible for keeping your office neat and clean.

16) Foremen requiring use of a phone shall use the foremen's office phone only. Calls are to be kept within (2) minutes so as not to tie up the lines. The shop phone is for the shop, the dispatcher's phone is for the dispatcher.

17) All company uniforms for both foremen and crews can be picked up inside locker room on prescribed day. Except for uniform exchanges NO crews are allowed in locker room.

18) The company vehicle you are assigned is not for your personal use, it is for company use only. Any deviation from this policy may result in removal of your vehicle from you or your termination.

19) Sick days are for illness only. If you are ill, you (not a spouse or friend) must contact the dispatcher, Dan or Harry at least one hour prior to regular showup time.

20) In order to get paid for holidays, you must work the day before and the day after (work days), unless there is notice given in advance (on proper form) and approved by Dan or Harry.

21) During the work season, there will be a Foremen's Meeting every Wednesday morning at 5:30 a.m. Attendance is mandatory.

22) Tools will be issued to the foreman and the foreman is financially responsible for tools. Mark them and keep them locked. Broken tools are to be returned for replacement. Tools damaged by negligent behavior will be charged to the foreman or the person directly responsible.

23) Equipment that is not operating properly should be tagged (noting deficiency) and left in the proper area as designated by the shop foreman. Also, notify the dispatcher or a mechanic.

24) Foremen are to clear all wage rate changes or wage rates for new hires with the owner prior to making promises to the individual in question.

I. GRIEVANCE PROCEDURE

It is expected that every employee will treat others as he expects to be treated. Management wants everyone to be treated justly and considerately at all times.

Anytime you feel you are not being treated fairly, or that you have a problem of any kind, management wants you to call attention to the matter immediately. There are several ways you can do this and get prompt action.

1) Talk With Your Supervisor

Many times a frank talk with your supervisor may be the easiest and most effective of dealing with problems. Your supervisor is responsible for more than just getting work out; he is responsible for seeing that you are treated fairly at all times. He is usually in the best position to help you.

2) Special Provisions For Handling Problems

It is recommended that you use the formal procedure in getting action on your problems as outlined below:

a) Your supervisor is responsible for seeing that you receive fair treatment. Take your problem to him, discuss it fully and frankly.

b) If you are not satisfied with the way your problem is handled in step one, you may take it up with the superintendent. Grievances are not to be discussed with the superintendent on the jobsite while work is going on and job progress could be held up. Conversations with the superintendent regarding grievances may be held during breaks on the jobsite or at the yard at the beginning or end of the day. Grievance meetings with the superintendent are to be held at a mutually agreed upon time between the two parties.

c) If you have taken the above steps and are not satisfied with the way the problem was handled, you may speak with one of the owners directly. One hour per week has been set aside by the owners to meet with employees. This hour is broken up into (4) 15 minute sessions. To arrange for an appointment with the owner, please sign up in the dispatch office by the close of business Friday the previous week. This meeting should lead to a final decision based on fairness to everyone concerned. The employee will be advised of the decision within (1) week.

d) Some of the above steps may seem complicated. If they do, it is because the company wants to include every available means for protecting your individual interests.

J. DISCIPLINARY PROCEDURES

DISCIPLINARY POLICY:

It is the intention of the owners of Chamberlain Contractors, Inc. to have a disciplinary policy that is to be adhered to by supervisors. Job performance standards are to be clearly addressed to every employee, and those standards are to be maintained.

When job performance falls below standards, we wish to give every employee a chance to bring their performance back up to standard. If job performance is adversely affected by personal problems, Chamberlain has enlisted the services of an EAP provider to counsel the employee at no initial charge to the employee. In this manner, we feel that every opportunity is afforded our valued employees to tackle their problems and to keep up their job performance.

Supervisors have had training in identifying job performance deficiencies and how to use the EAP program to address these problems. We intend for the EAP program to be a valuable tool in achieving high morale and high standards of job performance.

The corrective actions for dealing with poor job performance are addressed below.

I. VERBAL REPRIMAND

Anytime a subordinate's job performance is not up to expectations, the supervisor is instructed to monitor the situation. When warranted, it is the supervisor's responsibility to give the subordinate a VERBAL REPRIMAND.

A. A verbal reprimand is a verbal warning to the subordinate that his or her job performance is not up to standard.

B. When a verbal reprimand is made, a verbal reprimand form is to be filled out and placed in the employee file.

C. Verbal reprimand should include:

1) What the reason is for reprimand.
2) Make sure employee realizes that this is a formal reprimand.
3) Tell employee that the EAP is available if necessary to help with any problem that may be causing poor job performance (informal recommendation). The supervisor is not to try and diagnose employee's personal problems.

II. WRITTEN REPRIMAND

A. If the same job performance deficiency occurs again within (6) months after a verbal reprimand is given, the supervisor is instructed to issue the subordinate a WRITTEN REPRIMAND.

B. A written reprimand is given to the subordinate, and a copy is retained for the employee file. The written reprimand is to include:

1) Documentation that the job performance deficiency has not been brought up to standard.
2) Subordinate is to be referred to EAP.
3) Give a deadline for either:

    a) problem to be cleared up, or
    b) subordinate to meet with EAP to begin discussion of problems and possible solutions, or
    c) note that job will be in serious jeopardy.

C. Supervisor is to use EAP to help the subordinate with problems as follows:

1) Make call (in employee's presence if possible) to EAP to schedule appointment for employee. Leave a message stating:

    a) Your name.
    b) Organization name (Chamberlain Contractors).
    c) Make sure to tell EAP counselor that this is a supervisor referral.
    d) Give your phone number to be reached for follow up and when you can be reached at that number.
    e) State if it is OK for EAP counselor to leave a message for you at that number if you are not in.

2) When supervisor talks with EAP counselor, supervisor should be prepared to state:

    a) The nature of the job deficiency.
    b) The deadline you have given.

3) Follow up after proper amount of time has elapsed to make sure subordinate did see EAP counselor.

4) Make Dan Shaw aware if subordinate is going to miss any time for rehab of problem.

5) Take appropriate steps to help subordinate during rehab of problem.

III. SECOND WRITTEN REPRIMAND

A. If performance does not improve in stated job area and subordinate does not see EAP counselor, a SECOND WRITTEN REPRIMAND is to be given.

B. If second written reprimand is issued for the same job deficiency within (6) months of first written reprimand, then job termination is automatic.

IV. CONFRONTING SUBORDINATES:

A. Make sure you tell the person what is expected of him or her.

B. State the deficient area of job performance.

C. Do not try to diagnose the subordinate's problem.

D. Stick to the theme that the problem is poor job performance.

E. Don't let friendship enter into situation either positively or negatively.

F. Stick to the point.

K. SAFETY POLICY

1. GENERAL STATEMENT

The safety and well being of all personnel is important for efficient operation of the company. All efforts should be focused upon working in the safest, most efficient means possible. Safety implies acting with common sense, good judgement and foresight toward the welfare of all personnel and maintenance of equipment. It is an ongoing process that requires continuous monitoring and, therefore, a program.

2. GOAL

The major goal of Chamberlain Contractors, Inc.'s Safety Program is for zero work related accidents and injuries resulting in lost time. The secondary goal is the minimizing of all injuries.

3. RESPONSIBILITIES

The responsibilities for safety standards must be shared by all personnel. Only with full cooperation can a safety program really work.

A. Supervisory

It is the supervisory responsibility to:

1) Install safety conscious attitudes in themselves and in those they supervise.
2) Ensure that all operations are performed with the utmost regard for all personnel involved.
3) Thoroughly document all matters regarding safety.
4) Properly train employees in the safe performance of their jobs.
5) Give accident prevention instructions to employees on a continuous basis.
6) Plan and supervise work in such a manner as to preclude any accidents.

B. Employee:

It is the employee's responsibility to:

1) Maintain a safety conscious attitude throughout the performance of his duties.
2) Maintain a high level of cooperation with other employees and management regarding all aspects of safety.
3) Undergo a DOT physical exam at least every two years.

4. SAFETY COMMITTEE

A committee consisting of a safety director and foremen should meet on a regular basis to discuss safety policy, planning, procedures, programs and needs. Responsibility for development of the company safety program is held by this committee. In addition, they are responsible for:

A. Conducting frequent safety inspections to identify and eliminate unsafe conditions.

B. A prompt and thorough investigation to be done on all accidents to determine the causing factors and a correction procedure to prevent recurrence.

C. All reports by the safety committee regarding inspection and investigations should be kept on file at the office.

5. SAFETY MEETINGS

Safety Committee Meetings will be held once per week during the period of March 15th through December 15th as a part of the regular weekly Foremen's Meeting. In addition, one Safety Committee Meeting will be held in January and one in February during the slow season.

The topics discussed at these Safety Committee Meetings will include, but not be limited to:

- new ideas on safety
- accident investigation
- existing safety procedures

Literature, films, and other information are available from various sources and provide excellent backup material for safety meetings.

In addition to the weekly Safety Committee Meetings, each crew will have its own safety meeting (Tool Box Talk) once per week. The crew foreman will lead the meeting. A particular subject from your Tool Box Talk Manual will be discussed at each Foremen's Meeting. It is then the foreman's responsibility to discuss that same topic as the focus for his weekly Tool Box Talk. Other topics will include:

- safety inspections
- presentation of ideas and findings
- solicitation of new ideas

These monthly safety meetings will be held only during the busy season from April through December.

All safety meetings will be held during normal business hours. Attendance is required and a record of the safety meeting should be kept to include group name, date, and approximate time, meeting leader, attendees, subjects discussed and comments. The weekly Safety Committee Meeting minutes will be included as part of the Foremen's Meeting Minutes. These records should be kept on permanent file at the office to answer any questions that may arise concerning safety policy.

6. SAFETY PRACTICES

a) All on the job injuries and/or accidents must be reported within (12) hours to management. All employees reporting an on the job injury requiring a visit to the clinic will be required to take a drug test at that time.

b) All equipment will be operated in a safe manner. Procedures in our Safety Program Manual must be followed.

c) The wearing of safety belts is required by all employees in all company vehicles or while driving their personal vehicles for company business.

d) All unsafe, unhealthy or hazardous conditions or places shall be immediately reported to a supervisor and placed off limits or out of order until rectified.

e) All employees should render every possible aid to safe operations.

f) Personal protective equipment such as goggles, hard hats, gloves, etc., shall be properly worn as required.

g) Repairing or adjusting tools, machinery or equipment while in operation is forbidden.

h) Workers shall not operate, handle or tamper with any tools, equipment, machinery or facilities not within their scope of duties, unless they are thoroughly qualified and have received supervisory instruction to do so.

i) Loose or frayed clothing, finger rings or neck chains shall not be worn near moving machinery or other sources of entanglement.

j) Follow all instructions regarding the storage, handling and use of dangerous or poisonous substances. Wash thoroughly after using them.

k) Heavy objects should be lifted with the legs, not the back.

l) Horseplay, scuffling or other acts that have an adverse effect on the safety of personnel are prohibited.

m) Watch out for others, as they may be unaware of your actions.

n) No one will be allowed on the job while under the influence of intoxicating liquor or drugs.

o) No one shall be permitted or required to work with impaired ability or alertness that may cause accidents or injury.

p) Be aware of actions and surroundings at all times. Think before acting and look before moving.

q) Fire extinguishers should be located at each job site in a readily accessible manner. All personnel should be thoroughly trained in their proper use.

r) At least one employee should be trained in first aid equivalent to Red Cross training. All other employees should know general first aid and who to contact for more specific attention.

s) First aid kits should be available to all personnel and should be adequately stocked and maintained.

t) All injuries or accidents shall be reported immediately to the supervisor.

u) Make safe operations a habit.

v) Use common sense in all operations.

7) PRE-EMPLOYMENT SCREENING

A. The pre-employment screening will consist of the following for all applicants:

1) Completion of Chamberlain Contractors, Inc. application.

2) Completion of "Waiver of Confidentiality" workers compensation form.

3) Completion of "Employment Eligibility Verification" (Form I-9). Each applicant must be eligible.

*4) Passing of a standard EMIT Drug Screen.

*5) Passing of a DOT Physical Exam.

*The cost of a physical exam is $30. The cost of drug screen is $32. The total is $62. Before sending new applicants to Med Care to have these procedures done, a $15 deposit must be collected from the applicant and held by CCI. CCI will pay the remaining $47. If the applicant works for less than (30) days, the $47 will be deducted from the applicant's (employee's) final paycheck. An applicant may start work (at the supervisor's decision) on a temporary basis subject to the exam results.

B. In addition to the requirements listed above, applicants that wish to drive vehicles must provide the following information:

1) Evidence that he/she is at least 21 years old.

2) A current copy of their driving record. Each employee must be acceptable as a driver for the company by our current insurance company.

3) A valid drivers license from the state in which the applicant resides and for the class of vehicle required in the job description.

4) Submission of references from the last (3) jobs where the applicant had driving positions (including name of company, name of supervisor and phone number).

5) Submission of (3) personal references.

6) Completion of a written driving exam.

7) Completion of a road test.

8) Violation and Review Record.

9) Notice to Driver and Certification of Compliance.

8. ACCIDENT INVESTIGATION PROCEDURES

An accident report must be filled out for each accident by the immediate supervisor. The safety committee must study each accident to determine the cause and what should be done to prevent reoccurrence. The accident, its cause, and preventative action needed to be presented at the next safety meeting.

9. ENFORCEMENT

The Safety Policy and Program outlined above is designed for the protection and well being of all employees of Chamberlain Contractors, Inc.. Enforcement of this program must be done as outlined herein and, most importantly, by each and every employee on a daily basis. The result will be a safer and more stable work place.

SAFETY COMMITTEE MEETING AGENDA

1) Roll call

2) Discussion of weekly topic from Tool Box Talk Manual

3) Discussion/investigation of new accidents

4) Other new business and ideas

5) Discussion of new ideas raised at weekly Tool Box Talks and handing in of minutes of each meeting

6) Actions to be taken

7) Follow up on any employees on Worker's Comp.

TOOL BOX TALK AGENDA

For the week of ______________________ 19____

Group name ___________________________________

Date ____

Time meeting started __________________________

I. **Safety Inspection** (Make comments on back)

- Equipment (clean and safe operating condition?) Y____ N____ Comments; include equipment #'s
- First Aid Kits in place? Y____ N____ Items needed; include vehicle #'s
- Fire extinguishers in place and charged? Y____ N____ Comments (note if any needed and on which pieces of equipment)
- Crew:
- Protective gear available? Y____ N____ (goggles, earplugs, steel shoes) Comments
- Protective gear being used? Y____ N____ If no, why? Comments
- Individual protective gear being used as necessary? Y____ N____ (gloves, boots, long sleeve shirts) Comments

II. **Old Business** - (Open items from last meeting)

III. Presentation of the weekly Tool Box Talk topic discussed at Safety Committee Meeting

- Accident investigation results
- New rules

IV. Safety problems within crew

V. New ideas

VI. Actions to be taken

Meeting adjourned at ___________________ (time)

Signature ___________________________ Title _______________

Signatures of persons attending:

ACCIDENT INVESTIGATION FORM

(To be filled out by foreman)

Today's date: ____________________

Name of foreman filling out report: ____

Name of person causing or involved in accident: ______________________________

Date of accident: __________________ Approx. time: ________ a.m. p.m.

Where did accident occur? (city, state, specific bldg. area, street)

What happened? ____

Note injuries and/or property damage: ____

Why did accident occur? ____

In your opinion, what could have been done to prevent this from occurring?

Signature: ____________________________

Make any additional comments on back.

L. POLICY CONCERNING ALCOHOL & OTHER DRUGS

Chamberlain Contractors, Inc. is committed to the maintenance of a safe and drug free work place for all employees. Chamberlain is also committed to the enhancement of the quality of life for all employees, their families and the larger community. In keeping with this commitment, Chamberlain has adopted this policy concerning alcohol and other drugs. Through the implementation of this policy, by both management and staff, it is our goal to insure the reputation of the company and its employees and to provide assistance toward rehabilitation for any employee who seeks help in overcoming difficulties with alcohol or other drugs.

1) PURPOSES. The purposes of this policy are as follows:

   a) to establish and maintain a safe and healthy working environment for all employees;

   b) to insure the reputation of the company and its employees;

   c) to reduce the incidence of accidental injury to person or property;

   d) to reduce absenteeism, tardiness and indifferent job performance;

   e) to provide assistance toward rehabilitation for any employee who seeks the company's help in overcoming any addiction to, dependence upon or problem with alcohol or other drugs, thereby enhancing that employee's quality of life on and off the job.

2) BENEFITS; INCONVENIENCE; COOPERATION

Those employees with drug and alcohol abuse problems make up only a small fraction of the work force, and the company regrets any inconvenience that may be caused the many non-abusers by the problems of the few. It is believed, however, that the benefits to be derived from the reduction in number of accidents, the greater safety of all employees and the rehabilitation or termination of those who, because of alcohol or other drugs, create an unsafe work environment, will more than make up for any inconvenience or loss the rest of us must be subject to. The company earnestly solicits the understanding and cooperation of all employees and employee organizations in implementing the policies set forth herein.

3) DEFINITIONS

   a) alcohol or alcoholic beverage - means any beverage that may be legally sold and consumed and that has an alcoholic content in excess of .5% by volume;

   b) drug - means any substance (other than alcohol) capable of altering the mood;

   c) prescribed drug - means any substance prescribed for the individual consuming it by a licensed medical practitioner;

d) **illegal drug** - means any drug or controlled substance, the sale or consumption of which is illegal;

e) **he or his** - also means "she" or "hers" in appropriate context.

4) **HELP IS AVAILABLE**

a) Any employee who feels that he/she has developed an addiction to, dependence upon or problem with alcohol or other drugs, legal or illegal, is encouraged to seek assistance. Assistance may be sought by writing in confidence to, or asking for a personal appointment with, Daniel Shaw, Vice-President. An employee who voluntarily identifies himself or herself as an off duty drug user or volunteers for drug testing prior to being identified through other means, will not be disciplined if he/she agrees to:

1) obtain counseling through the approved Employee Assistance Program within one week,

2) be placed on suspension, or be reassigned to a non-safety position at management's option, pending evaluation by the EAP counselor,

3) follow through with the rehabilitation or treatment recommended by the EAP counselor,

4) submit to and pay for follow up testing for a one year period after returning to work following treatment or after being given a clean bill of health from EAP,

5) thereafter refrain from using illegal drugs.

Failure to meet all of the above requirements will result in termination.

b) Each request for assistance will be treated as confidential by the executive receiving it and only those persons "needing to know" will be made aware of such request.

c) Daniel Shaw, Vice-President, in conjunction with the company employee assistance provider, will be responsible for developing contacts with local hospitals and community organizations offering alcohol or drug treatment programs (e.g., Care units, Alcoholics Anonymous, Narcotics Anonymous, Community Health Centers, etc.) and for referring employees seeking assistance to an appropriate treatment organization.

d) Rehabilitation itself is the responsibility of the employee. For those individuals who have group health insurance, medical attention necessary for treating alcoholism or drug addiction may be covered in part or in whole by the plan. For those who do not have health insurance, the EAP provider can assist you in finding an affordable, and in some cases a free, program to enroll in. For employees enrolled in a formal treatment program, the company will grant one time rehabilitation leave on the following basis:

(1) Up to (30) days - on half base pay;

(2) Up to an additional (60) days - one quarter base pay;

(3) With physicians and other professionals continued input with CCI representatives on a weekly basis.

(4) To be eligible for continuation in employment on a rehabilitation pay basis, the employee must have been employed for at least two continuous seasons; must maintain at least weekly contact with the executive to whom he reports; and must provide certification that he/she is continuously enrolled in a treatment program and actively participating in that program. Benefits, as described above, will continue during seasonal layoff periods. Employees who have successfully completed a (90) day probationary period, but who do not meet the two year employment requirement, will be eligible for rehabilitation leave on a non-pay basis.

e) Upon successful completion of treatment, the employee will be returned to active status without reduction of pay or seniority, as per Section 4 (a) above.

5) REJECTION OF TREATMENT - FAILURE OF REHABILITATION

Any employee suffering from an alcohol or drug problem which has adversely affected their work performance, who rejects treatment or who leaves a treatment program prior to being properly discharged, may be terminated from employment. Chamberlain Contractors reserves the right to terminate any employee based upon poor work performance or other work related problems. No employee will be automatically eligible for this Employee Assistance Program more than one time. Eligibility beyond the first occurrence will be at the discretion of Chamberlain Contractors.

6) ALCOHOLIC BEVERAGES

a) No alcoholic beverage will be brought into or consumed upon company premises.

b) Drinking or being under the influence of alcoholic beverages while on duty is cause for termination.

c) Any employee whose off duty abuse of alcohol results in excessive absenteeism or tardiness or is the cause of accidents or poor work performance will be referred to the Employee Assistance Program for rehabilitation. If the employee refuses or fails rehabilitation, he/she shall be terminated.

7) PRESCRIPTION DRUGS

a) No prescription drug shall be brought upon company premises by any person other than the person for whom the drug is prescribed by a licensed medical practitioner, and shall be used only in the manner, combination and quantity prescribed.

b) Any employee whose abuse of prescription drugs results in excessive absenteeism or tardiness or is the cause of accidents or poor work performance, will be referred to the Employee Assistance Program for rehabilitation. If the employee refuses or fails rehabilitation, he/she shall be terminated.

8) ILLEGAL DRUGS

a) The use of an illegal drug or controlled substance or the possession of same on or off duty is cause for termination.

b) The sale, trade or delivery of illegal drugs or controlled substances by an employee to another person is cause for termination and for referral to law enforcement authorities.

c) The "occasional", "recreational", or "off duty" use of illegal drugs will not be excused. The company's experience in recent years indicates that employee involvement with illegal drugs, even "recreational", may be expected to result in:

(1) Accidents;

(2) Financial and domestic difficulties and, as a result:

    (i) unstable performance
    (ii) theft

(3) Decreased work performance due to:

    (i) arrests of employees
    (ii) poor customer relations, short tempers, etc.

(4) A growing ring of drug use as users supply others.

9) EMPLOYMENT OF PERSONS ADDICTED TO OR DEPENDENT UPON ALCOHOL OR DRUGS

a) A person presently using illegal drugs or having a history of alcohol or drug dependency will not be knowingly employed unless there is evidence of rehabilitation satisfactory to the company.

b) All applicants for employment will be required to take a pre-employment physical examination, including a urinalysis and/or blood test. Costs associated with these exams are outlined in the Pre-Employment Screening section of this manual. Applicants whose examinations and interviews, combined with general reference background checks, indicate present alcohol or other drug abuse, will not be hired.

10) SAFETY OF WORK FORCE; WORK RULES

a) In order to insure the safety of the work place and the work force, the following work rules will apply to all employees effective upon receipt of notice of this policy.

(1) Each employee as a condition of continued employment, will be required, upon request of company supervisory personnel and with reasonable cause to:

(i) submit to search of any vehicle brought upon or parked upon company premises;

(ii) submit to search of any pocket, package, purse, briefcase, tool box, lunch box, or other container brought on company premises;

(iii) submit to search of desk, file cabinet, etc.

11) TESTING

a) Each employee, as a condition of employment will be required, upon request of company supervisory personnel, to submit to blood and/or urine tests for determining use of alcohol and/or other drugs.

b) Employees operating vehicles and other equipment involved in accidents or otherwise involved in unusual incidents that result in damage to an automobile, result in bodily injury or result in material or property damage will be tested. Reason: We have already seen that it is impossible to immediately determine the dollar amount of damage sustained to vehicles. Drivers understate the amounts, and later, the true value is discovered too late to make the test meaningful. Any incident warrants a test if damages occur.

c) Random testing will be performed as per NIDA guidelines.

d) Each employee, as a condition of employment will also be required, from time to time, to supply the form of "Certification and Declaration" that illegal drugs are not being used, attached as Exhibit "A".

e) Testing costs are to be paid by CCI.

f) People being tested will be required to remain at the testing site until a specimen is produced (60 c.c.)

g) Anyone who fails to report to the designated collection site, refuses or fails to provide a specimen, or attempts to alter, adulterate, or substitute the specimen provided shall be terminated.

12) POSITIVE TESTS

a) If a positive alcohol or drug test is as a result of a self referral, steps will be taken under Section 4 (a) above.

b) If a positive alcohol or drug test is as a result of a test performed other than on a self referral basis, the employee will be, 1) terminated or, 2) at management's option, disciplined under established procedure with a written reprimand and referred to EAP for evaluation. If the second option is exercised by management, the employee must agree to meet all of the conditions outlined in the self referral of Section 4 (a), numbers 1-6 above.

13) EFFECTIVE DATE - NOTICE TO EMPLOYEES - STATE LAWS

a) The policies set forth in this Policy Guide are effective immediately upon notice to employees. Each present employee will be furnished a copy of this policy and will sign a receipt for same. Newly hired employees will each be furnished a copy before hiring.

b) These policies will be implemented in a manner that will comply with all applicable federal and state laws.

14) CONFIDENTIALITY

The results of all physical examinations, blood and urine tests and treatment records will be treated as confidential. Disclosure will be made only upon the written request of the employee or as required by a court order or state or federal law.

M. DISCLAIMER STATEMENTS

1) Seal coating Employees:

The application of coal tar sealer to existing paved parking facilities requires the handling and exposure of the coal tar emulsion in a liquid and vapor state over a prolonged period of time. Chamberlain Contractors wants to minimize any potential health related problems. We, therefore, (upon request) provide all employees with respirators and Aloe cream to prevent burns on the skin. If you come in contact with a liquid coal tar emulsion, CCI requires all employees to use respirators and cream. If employees elect not to use those safety products provided, they do so at their own risk, and CCI assumes no responsibility.

2) Concrete/Asphalt Employees:

All employees who either operate equipment or work on the pavement surface will be required to wear boots. No sneakers allowed.

3) Employment at Will

Chamberlain Contractors, Inc. has the right to terminate the employment relationship at will, and for any violation of this policy manual.

4) Policy Manual

The provisions of the Chamberlain Contractors, Inc. Employee Manual Policies & Procedures are not contractual and may be unilaterally changed by Chamberlain Contractors, Inc. at any time.

ACKNOWLEDGEMENT OF UNDERSTANDING

1) I have received a copy of the 1990 Chamberlain Contractors, Inc. Employee Manual Policies & Procedures. I will read and become familiar with the contents of this manual and be responsible for its upkeep.

2) I have been provided a written copy of the Chamberlain Contractors, Inc. Policy Concerning Alcohol and Other Drugs. I am aware that this policy forbids the use of or dealing in illegal drugs, on or off duty, and that violation of this policy is cause for termination.

3) I have been provided, read and understand Chamberlain Contractors, Inc.'s Company Safety Policy and Program and agree to abide by and enforce those standards while employed at CCI.

Printed Name: ____________________________

Signature: ______________________________ Date: ________________

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

STATEMENT OF
MARK HAYWARD
ACTING CHIEF COUNSEL FOR ADVOCACY
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATION,
BUSINESS OPPORTUNITIES, AND ENERGY
U.S. HOUSE OF REPRESENTATIVES
MARCH 8, 1991

Mr. Chairman, I am pleased to take this opportunity to share the views of the Office of Advocacy of the U.S. Small Business Administration on such a vital issue which adversely affects all Americans, including the 20 million small business owners across the country. Substance abuse by our nation's workers places in jeopardy many qualities of everyday life. It hurts the economy by reducing the productivity of our American workers. The drug scourge is estimated to cost our nation as much as $100 billion annually in lost productivity. As emphasized in President Bush's recently released National Drug Control Strategy, our nation's businesses have a vital role to play in eradicating the drug epidemic plaguing our country.

Substance Abuse and Small Businesses

While substance abuse refers to both illicit drug use and alcohol use, the following remarks primarily address the issue of illicit drug use by our nation's workers. Substance abuse reduces America's ability to effectively compete with our foreign trading partners because it results in higher production costs and lower quality of goods. Drug users tend to be far less productive than their drug-free colleagues. According to the National Institute on Drug Abuse (NIDA), they are more likely to have lengthy absences from work, more likely to injure themselves or a co-worker, and are more likely to file a workers' compensation claim than are drug-free workers. Data further show that the average cost to the employer is $7000 per abuser each year.

But most harmful of all, substance abuse threatens the physical and mental well-being of the American worker.

Let there be no misunderstanding. Drug users are not confined to the unemployment lines. NIDA reports that 68 percent of all illegal drug users are employed either full or part-time -- roughly 9 million working drug abusers. While there is no hard statistical data on how many of these abusers are employed by small businesses, we know that small businesses employ 58 percent of the nation's workforce. This translates into over 5 million drug abusers working in small businesses.

This may well be a conservative estimate as those employees at most risk for substance abuse are more likely to be employed by small rather than large firms. For example, small businesses employ a greater percentage of young workers than do large firms. Surveys show that in general, marijuana and cocaine abuse are more prevalent in young workers. NIDA estimates that one in every five workers ages 18-25 and one in every eight workers ages 26-34 use drugs on the job.

Employee substance abuse is a particular threat to the future viability of American small business. Demographic predictions indicate that by the year 2000, the work force will be older. The aging factor will contribute in large part to the higher wages paid to workers. Compensation for increased labor costs will require a concomitant increase in worker productivity. Economists at the U.S. Small Business Administration have conducted an in-depth examination of the changes facing small businesses as we approach the 21st century. We find that increasing productivity is the key to small business success in the 1990s.

While labor productivity of small business labor can be increased by improving the quantity or quality of capital such as increased use of computers and better management techniques, employee drug use will preclude any productivity gains by means of improvement in the quality of HUMAN capital.

Given these facts, it is not surprising that the nearly 2000 delegates to the 1986 White House Conference on Small Business voted drugs in the workplace as one of the top crucial issues facing small business.

Recommendations

But we must do more than simply recognize the serious threat to small businesses posed by drugs in the workplace. We must offer small businesses help to combat this threat. As in so many other areas, small businesses are at a disadvantage when compared to larger firms in waging a war against illicit drug use by their employees. This disadvantage is exemplified by disparities in utilization of Employee Assistance Programs by small versus large businesses.

1. Written Policies. Unlike large businesses, most small firms have no formal policies regarding employee drug use. A 1988 Bureau of Labor Statistics (BLS) survey revealed that just 13 percent of small businesses (fewer than 500 employees) had a formal policy on drug use while 64 percent of large firms had such policies. Yet one of the first, cost-free steps a small business can take is to institute a formal, written policy on

drug use by employees. Generally, such a policy would:

- state that drug use by employees will not be tolerated;
- describe what constitutes a violation of the no drug-use rule and the resulting consequences;
- state that drug use is a treatable condition and offer information on where employees can get help; and
- explain the business' policy on drug testing.

2. Employee Assistance Programs. One of the most effective anti-drug programs utilized by the business community is the Employee Assistance Program (EAP). EAPs offer both a compassionate and cost-effective means for helping drug-abusing employees deal with their problem. They offer a wide range of services including education, information on treatment centers, and counseling. It is estimated that for every dollar an employer invests in an EAP, the savings range from $5 to $16 in reduced absenteeism, improved productivity and a safer working environment.

Yet while EAPs may prove to be cost-effective over the long run, many small firms find the upfront costs too prohibitive. NIDA estimates that two-thirds of the workforce still has no access to EAPs. The 1988 BLS survey revealed that while 71 percent of the nation's largest businesses with over 1000 employees provide employee assistance programs to their workers, only 5 percent of small businesses with fewer than 50 workers offer similar programs.

One way to lower costs of an EAP for small firms is through consortia. Mr. Chairman, your home state of Oregon, as you know, is currently implementing a broad initiative to combat drugs in the small business workplace. One prong of that initiative is the creation of EAP consortia. The Oregon Business Council's six-point plan, "Fightback Against Drugs," offers an effective means for small firms to combat drugs in the workplace. With 95 percent of Oregon's businesses having 20 employees or less, such assistance for small businesses is vital and serves as a model for the rest of the nation.

3. Drug Testing. Drug testing programs should be a viable option for small as well as large businesses. The goal of drug testing should be one of deterrence and rehabilitation, not punishment. Any firm utilizing drug testing should offer information on the availability of EAPs and treatment programs to any employee testing positive.

It is clear that large businesses employ drug testing programs to a much greater degree than do small firms. The BLS survey showed that 43 percent of the nation's large businesses with more than 1000 employees had drug testing programs compared to just 2 percent of small firms with fewer than 50 employees.

The small business community needs to be educated on the benefits which accrue from pre-employment drug testing. While there is no statistical evidence, there is a growing belief that drug abusers seeking employment are increasingly turning to small businesses because they know that small firms do not utilize pre-employment drug testing to the degree that large firms do. While small business owners may be reluctant to incur the costs of drug testing -- even for job applicants only -- pre-employment testing is allowed in more states than other testing procedures, such as random drug testing. Wary of incurring legal costs from potential litigation associated with random testing, small firms may therefore be more likely to utilize pre-employment testing. If a job applicant refuses to take a drug test, he or she can simply look elsewhere for employment.

Many employers are required to impose random testing for certain current employees -- particularly those employed in safety-sensitive positions such as in the transportation and construction industries. Small firms engaging in either random testing, testing based on cause, and/or pre-employment testing need guidance on how to best implement such testing procedures. Such testing programs must attempt to ensure a drug-free workplace while protecting the privacy concerns and rights of the employees.

Pre-employment drug testing is overwhelmingly supported by the nation's workers. A Gallup poll found that 68 percent of surveyed workers thought that companies should have the right to test job applicants for drug usage before hiring them while only 19 percent disagreed.

4. Education. Small businesses seem to be hindered by a general lack of information regarding the issue of drug abuse in the workplace. To help educate small businesses, the SBA has cosponsored seminars and workshops to provide local small businesses with information on how to implement anti-drug programs and to comply with the Drug Free Workplace Act and its implementing regulations. While we have no statistical evidence, the Act doesn't appear to be overly burdensome on small firms. For example, while federal contractors and grantees are required to establish a drug awareness program under the Act, such programs need not include an EAP but rather simply provide information on where the employee may find a local EAP. The Office of Advocacy, which hears of many other concerns of individual small business owners, has not received any complaints about the Drug-Free Workplace Act and its implementing regulations.

Activities of the U.S. Small Business Administration

The SBA's Office of Advocacy is working with the Office of National Drug Control Policy (ONDCP) to ensure that the serious problem of substance abuse in the small business workplace is adequately addressed. The SBA participates on the ONDCP Demand Reduction Working Group. The Office of Advocacy has supplied to ONDCP statistical information indicating the breakdown of firms by employment size. In addition, the Office of Advocacy participated in discussions with ONDCP on how drug-free workplace requirements could take into account the ability of small businesses to comply with additional regulations.

The SBA has also utilized its nationwide network of District Offices to disseminate information on anti-drug programs and available federal resources. For example, the Department of Labor provides grants to EAP consortia which assist small businesses. The SBA's Office of Private Sector Initiatives has provided those SBA District Offices located near these consortia with information about the EAP. The District Offices are then able to "market" these EAPs to local small businesses. In addition to information on EAPs, our District Offices can provide other federal publications to help small businesses implement an anti-drug program.

Our District Offices have also cosponsored seminars and workshops to provide local small businesses with information on how to implement drug-free workplaces. This past summer, our local District Office in Washington, D.C. cosponsored a workshop with the Corporation Against Drug Abuse to help small firms respond to substance abuse problems. Last spring, our Philadelphia District Office cosponsored a one-day conference to assist small business in complying with the Drug-Free Workplace Act.

The SBA also operates a toll-free "Answer Desk" which receives, on average, some 300,000 calls each year from small business owners and prospective small business owners. Should any caller request information on drugs in the workplace, the SBA advises the caller to call the National Institute for Drug Abuse Workplace Hotline which can provide more detailed information.

In terms of research efforts, the SBA will continue to provide information to other federal agencies regarding the breakdown of firms by employment size.

Conclusion

Mr. Chairman, the prevalence of drugs in the workplace should be a serious concern for every small business. Small business owners must recognize that drug abusing employees are not just the problem of the business next door -- it is a potential problem for every small business owner. While the response of the business owner will depend upon the available resources to that owner, at the very least, no small business should be without a formal policy on drug use.

Information regarding the availability of employee assistance programs must be disseminated to small businesses. They need to be aware of the implications of the Drug-Free Workplace Act. They must be educated on the benefits pre-employment drug testing programs and how to implement them. Certainly, every small business should be encouraged to post a formal policy on employee drug use.

The goals of every anti-drug abuse program should be to deter drug use and rehabilite drug-abusing employees. Small firms have often invested a great deal of time training an employee and if the drug-abusing employee can reform, it benefits both the worker and the employer. Thank you for allowing me to testify on this critical issue. I would be happy to answer any questions.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Alcohol, Drug Abuse and
Mental Health Administration
Rockville MD 20857

STATEMENT BY

JOSEPH H. AUTRY III, M.D.

DIRECTOR

DIVISION OF APPLIED RESEARCH

NATIONAL INSTITUTE ON DRUG ABUSE

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND ENERGY

Programs and Policies for Assisting Small Businesses in Addressing Substance Abuse

10 a.m.

March 8, 1991

Room 2359A

Rayburn House Office Building

Introduction

Mr. Chairman and members of the Subcommittee, I am Dr. Joseph Autry, Director, Division of Applied Research, National Institute on Drug Abuse (NIDA), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). I am pleased to represent NIDA and participate in this hearing to testify on the problems of substance abuse in the workplace and NIDA's role in addressing these problems.

Scope of the Problem

Many employers, both public and private, are taking steps to address the problem of drugs in the workplace. They have been stimulated by the realities of life in late 20th century America and find themselves in a highly competitive global marketplace. They have also been stimulated by Federal leadership and incentives. The Federal effort to reduce the demand for drugs in the workplace is multi-faceted and is influencing both public and private sector workplaces.

Employers have good reason to be concerned about drugs in the workplace. Data from the 1990 NIDA National Household Survey on Drug Abuse indicate overall declining use of most illegal drugs.

However, the data also show that 68 percent of those reporting past month (or current) illicit drug use were employed either full or part time. This suggests that nearly 9 million employed people are current illicit drug users. Among 18-34 year old, full-time employed Americans, 24 percent used an illicit drug in the past year, and 10.5 percent used an illicit drug in the past month.

While the 1990 Household Survey data have not yet been broken down according to current drug use among full-time employed workers ages 18 to 34 by industry, such analysis is available from the 1988 Household Survey. This analysis revealed that the past month (or current use) industry-specific prevalence rates, in order of increasing drug use, were: retail trade (11.7 percent), manufacturing (12.3 percent), transportation (12.5 percent), wholesale trade (19 percent), professional services (20.4 percent), finance (20.9 percent), repair service (21.8 percent), and construction industries (21.9 percent).

A national study titled The Economic Costs of Alcohol and Drug Abuse and Mental Illness: 1985 published in 1990, reported that the estimated total cost of drug abuse in 1988 -- projected on the basis of a variety of indexes -- was $58.3 billion. This is a conservative estimate as no costs from "crack" use are included because the crack epidemic hit the U.S. after the 1985 base year of this study. The direct and indirect costs of drug abuse on the workplace are indicated by effects of drug abuse on both the performance and productivity of employees as well as the profitability of the organization. The direct costs attributed to drug abuse include detoxification, drug treatment, medical care costs associated with illnesses related to drug abuse, and psychiatric care. Indirect costs related to an employee's drug abuse include absenteeism, accidents, impaired decisionmaking, poor morale, public relations problems, and reduced productivity. Of course, the human costs in terms of lives lost and families and careers destroyed cannot be translated into dollar amounts.

Recent studies are beginning to provide data on the relationship of drug abuse to performance and productivity. A recent U.S. Postal Service study reported that for new hires with a drug positive urine test involuntary separation rates were 47 percent higher and absenteeism rates were 59 percent higher. In a study conducted at the Georgia Power Company, the relationships between drug abuse and various measures of workplace performance were examined by comparing records for employees who were referred to the company's Employee Assistance Program or who entered treatment for drug abuse with a group of matched controls for the year prior to referral or treatment. Abusers were found to have consumed almost twice the medical benefits as controls ($1,347 vs. $678), to have been absent 1.5 times as often (91 hours/year vs. 60 hours/year), and to have made over twice the number of workers' compensation claims (.11/employee/year vs .05).

Employer Responses to Drugs in the Workplace

It is encouraging to note that a substantial number of companies have already established workplace programs. A recent pilot study by the Department of Labor's Bureau of Labor Statistics reports that the percentage of employers with a formal written policy grew by about 60 percent over the last two years, and the percentage of employers with employee assistance programs (EAPs) has doubled. Despite this substantial growth in programs, many small sized companies have not adopted workplace programs. A 1988 Bureau of Labor Statistics study indicates a direct relationship between the size of a business establishment and the existence of an EAP, drug testing program, or formal written policy regarding drug use by employees. The study reported that only 6 percent of establishments with fewer than 10 employees (the vast majority of employers have establishments with less than 10 employees) have a formal policy on drug use, but that 83 percent of establishments with 5,000 or more employees have such policies. The two major reasons cited for why smaller companies have not initiated workplace programs included cost barriers -- for most there is no human resources budget and the proportion of resources which must be devoted to these services is far greater than for larger employers -- and the belief among smaller employers that their workforce is not using drugs. Unfortunately, there is no research to support this belief that employees in small businesses use illegal drugs or misuse legal drugs any less than employees of larger businesses.

NIDA's Leadership Role

NIDA has played a leadership role in addressing the problem of drugs in the workplace since it established the Office of Workplace Initiatives in early 1987. The functions of that office are now carried out by NIDA's Division of Applied Research.

Eliminating drug abuse on the job is the focus of NIDA's drug-free workplace initiatives. Toward this goal, we offer technical assistance to Federal, private sector and other public sector employers in developing workplace initiatives which, when implemented, help eradicate drug use among their workers. NIDA conducts research to enhance the strong scientific foundation on which its workplace activities are based.

Research conducted within NIDA's drug-free workplace program reflects the Institute's longstanding scientific leadership in such areas as drug testing and the effects of drugs on human performance. The program's research component has been expanded to include such topics as the prevalence of drug abuse among employed Americans, the effects of drug abuse on the workplace, and the relative effectiveness of different policies to reduce drug abuse on the job.

To ensure the highest standards for drug testing in the Federal arena, NIDA administers the National Laboratory Certification Program (NLCP), which sets stringent scientific and technical standards for laboratories performing drug tests for the Federal Government. The program has become the standard for urine drug testing, and many private sector companies use the NLCP-certified laboratories.

NIDA's Small Business Assistance

Much of NIDA's drug-free workplace activity is applicable to small businesses. Several of our projects and research activities are specifically designed to assist small businesses.

Currently, we are in the second year of a contract with the National Association of State Alcohol and Drug Abuse Directors (NASADAD) to deliver 10 State workshops for small and medium size employers. The workshops are designed to introduce the smaller employer to a comprehensive drug-free workplace program, and to provide resources for ongoing assistance in this area. Our involvement in this project has made us aware of the difficulties in attracting small business owners and managers to workshops on this topic. Competing demands of running a business, as well as the perception that drugs are not a problem among their workforce, are two barriers which inhibit attendance at this type of gathering.

In 1990, we completed a study of drug-free workplace policies used nationwide by organizations of all sizes. An analysis of generic issues and options facing employers and a selected sample of these policies will be published this year, and made available to employers seeking assistance with policy development. NIDA's experience with this study, in spite of efforts to over sample for small business, indicates that very few small businesses have developed drug-free workplace policies.

NIDA will be funding a project this year to develop and test a user friendly "how to" manual to help small businesses develop strategies for successfully implementing drug-free workplace programs. This project will identify resources available to small businesses, and provide instructional workshops at five sites across the country to small business owners. The workshops will introduce them to viable low cost strategies and elicit their feedback on the "how to" document. Preliminary data indicate that business consortia and multi-business collaborations are among the most viable and cost effective techniques for the small business to implement drug-free workplace programs.

The National Institute on Drug Abuse has provided a toll-free Drug-Free Workplace Helpline since February 1987 to provide technical assistance to business, industry, and unions on the development and implementation of a comprehensive strategy to address drugs in the workplace. Helpline staff provide individualized consultations, publications, and referrals to effect transfer of the best available technology and information addressing such topics as: developing and implementing a drug abuse policy; employee education and supervisor training; drug testing programs; signs and symptoms of drug abuse; and the nature and extent of drug abuse. The Helpline currently receives over 1,000 calls per month for assistance. This is up from an average of 300 calls per month in its first year of operation. Over 50 percent of calls are from employers with less than 500 employees; and the vast majority of those calls are from employers with less than 250 employees.

In early fiscal year 1992, NIDA will initiate an impact study of the Helpline. Through this study we hope to determine to what extent the Helpline has been responsive to the needs of its users, and to what degree callers utilize the resources and assistance provided.

NIDA also has a contract to operate a toll-free Drug Abuse Information and Treatment Hotline which is available to everyone, including small businesses. This service provides drug related information to callers, helps build their motivation to seek treatment for themselves or others, and provides names and telephone numbers of drug treatment programs and community support groups in their areas.

NIDA-produced materials are distributed through the National Clearinghouse for Alcohol and Drug Information (NCADI). Specifically, we provide: 1) a 4-part videotape series on drugs in the workplace, which is available on loan and is suitable for supervisor and employee education; 2) a guide to help employers through the process of planning and organizing workplace drug abuse programs, Strategic Planning for Workplace Drug Abuse Programs (currently being updated); 3) a Model Plan for Comprehensive Drug-Free Workplace Programs, originally developed to serve as the guide to Federal agencies in their development of drug-free workplace programs, but now also serves as a useful model for the private sector; and 4) Guidelines for the Development and Assessment of a Comprehensive Federal Employee Assistance Program, which can be used by any employer to determine an EAP's capacity for delivering relevant services. All of these materials provide highly relevant and useful information that can be easily obtained and used by small businesses. In early fiscal year 1992, NIDA is also planning to fund a project to develop a package of training and education materials for supervisors and employees and a plan for their dissemination. These materials will be provided free of charge and therefore will be more attractive to small businesses with limited resources.

NIDA's View on the Impact of the Drug-Free Workplace Act

The Drug-Free Workplace Act appears to have had a substantial impact on stimulating thought and attention to the issue of drugs in the workplace for businesses of all sizes. When the law was first enacted, approximately 15-20 percent of the calls received by the NIDA Drug-Free Workplace Helpline pertained to questions about the Act. Today, only about 5 percent of the calls concern the Act, indicating, we believe, an increased understanding of it's requirements.

While planning for NIDA's State workshops for small and medium size businesses, coordinating committees in the States viewed the Act as a motivator for attracting participants to the workshop. They also felt that businesses were seeking information about the Act, as well as resources for complying with it.

A major contribution of the Drug-Free Workplace Act is that it has prompted private sector employers that do business with the Federal Government to address the problem of drugs in the workplace. Coincidentally, we have observed increased interest from private sector companies that are not directly affected by the Act. It is NIDA's view that the value of the Drug-Free Workplace Act does not lie solely in the Federal Government's ability to monitor and enforce the Act, but rather in the capacity for the Act to stimulate private sector employers to discuss and address the issue of drugs in the workplace. Prior to the passage of the Act, many fewer private sector employers were required or motivated to address the issue of drugs in their workplace.

We expect that as more companies address the issue of drugs in the workplace, some will expand from those activities designed to meet the minimum standards of the Drug-Free Workplace Act, to activities that reflect a commitment to creating a drug-free work environment and a desire to help drug-using employees to stop using drugs.

To date, NIDA is not aware of any NIDA grantees or contractors that have been unable to comply with the provisions of the Drug-Free Workplace Act. This is an issue that each Federal agency needs to address for their own grantees and contractors.

Drug Testing Programs

Mr. Chairman, in addition to addressing problems of substance abuse in the workplace, you asked us about drug testing programs, specifically as they relate to small businesses. Companies engage in drug testing on a number of occasions including: (1) pre-employment or during a probationary period; (2) when there is reasonable suspicion an employee is using illegal drugs; (3) following an accident or unsafe practice; (4) as part of routine physical exams; (5) during random drug tests of designated employees; and (6) as part of monitoring employees undergoing drug abuse rehabilitation or counseling.

Consequently, urine screening is rapidly gaining recognition as an effective tool in identifying employees with potential drug problems. A December 1989 Gallup poll surveying 1,007 American workers reported an almost unanimous consensus (97 percent) that workplace drug testing is appropriate under certain circumstances. Eighty-five percent believe it also has potential for deterring illicit drug use.

Many of the Nation's largest employers, including major corporations, manufacturers, public utilities, transportation, and many small businesses are increasingly using urinalysis to screen job applicants. Employee drug testing is similarly increasing in incidence. The 1988 survey conducted by the Bureau of Labor Statistics found that, in general, the larger the establishment size, the more likely its employees were to be covered by a drug testing program. Only 1.1 percent of workers employed in the smallest establishments (1-9 employees) were covered by an employee drug testing program, as compared to 67.6 percent of workers employed in the largest establishments (5,000 or more employees). Overall, almost 20 percent of employees work in an establishment with a drug testing program.

Summary

In summary, it is clear that drug abuse is a problem in our Nation's workforce. This has obvious direct and indirect adverse consequences to the workplace and to the well being of all Americans. American employers and citizens are paying for the added costs of employee drug abuse through accidents, innocent lives lost, workers who are absent from the job more often, lost productivity, and diminished ability to compete in the world marketplace. For smaller businesses with fewer resources, these added costs can determine their future success or failure. The need to provide support, including technical assistance, materials, and training, to small businesses is an important part of NIDA's mission to prevent and stop drug abuse in our Nation.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions.

TESTIMONY OF ROLAND G. DROITSCH
DEPUTY ASSISTANT SECRETARY OF LABOR FOR POLICY
BEFORE THE

HOUSE COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND ENERGY

OVERSIGHT HEARINGS ON ASSISTING SMALL BUSINESSES IN ADDRESSING SUBSTANCE ABUSE IN THE WORKPLACE

Mr. Chairman and Members of the Subcommittee: my name is Roland G. Droitsch. I am the Deputy Assistant Secretary of Labor for Policy. I have been delegated general responsibility for developing and implementing the Department's responsibilities in the area of substance abuse in the workplace. It is a pleasure to be here today and discuss with you the Department of Labor's role in assisting small businesses in addressing the problems of substance abuse in their workplaces.

THE WORKPLACE AND SUBSTANCE ABUSE

It is generally acknowledged that the war on drugs cannot be won without significantly reducing the demand for illegal drugs, and there is a growing consensus that the workplace must play a key role in the overall effort to fight the illegal drug problem in this country.

While the Department of Labor recognizes the importance of the problem of illegal drug abuse in the workplace, we also recognize that the abuse of alcohol and licit drugs is a significant problem in the workplace and must also be addressed. Therefore, our program and this testimony speaks to this broader problem of workplace substance abuse.

The uniquely important role of the workplace in combating substance abuse is reflected by the estimate that 68 percent of those who use illegal drugs are employed either full or part time and the fact that 1 in 10 people in this country have an alcohol problem. The data on prescription abuse is not as well documented but this abuse is also believed to be substantial.

This high prevalence of substance abuse in the workplace has placed a heavy burden on American businesses large and small. Gross estimates of the overall costs of substance abuse on businesses have been projected to be many billions of dollars a year. While it is difficult to find reliable and specific data on the extent and impact of substance abuse in the workplace, it is widely accepted that substance abuse is:

A Major Workplace Safety and Health Problem. There is evidence that substance abuse is a significant workplace safety and health problem, contributing to higher accident and injury rates, increased health care costs, and increased workers' compensation claims.

An Important Productivity Loss Factor. Substance abuse contributes to higher absenteeism and turnover. These and other costs imposed on business result in lower productivity at a time when improved U.S. competitiveness is critical to the nation's economic strength.

An Important Deterrent to Employment and Training. In order to prepare our workforce for the challenges of the future, employers must continually educate, train, and retrain their employees. Without a commitment to a workforce free from substance abuse, we cannot secure a quality workforce. Substance abuse in the workplace and a quality workforce are incompatible.

A Significant Health Care Cost Problem. Health care costs have become a major concern for both employers and employees. Not only do substance abusers themselves generate higher health care costs, a fast growing component is the cost of benefits associated with the downstream effects of substance abuse on family members.

While the high prevalence and staggering costs to business would appear to make the problem intractable, we at the Department of Labor believe there is good reason to be optimistic about addressing the problem of substance abuse in the workplace.

A 1986 Conference Board report states that persons with addictive disorders often value their jobs more highly than their families or other social support networks. Faced with the threat of job loss, the addicted employee - whether addicted to an illegal drug, a prescription drug, or alcohol - is more likely to seek treatment. Thus, the workplace has been demonstrated to be the institutional setting most capable of motivating a substance abuser to receive the help he or she needs. It is this key factor that makes the workplace unique and provides the concerned employer with the fulcrum to effectively address the problem of substance abuse in the workplace.

Despite the growing recognition and consensus that the workplace can play a key role in the overall effort to fight drug abuse, employers and employees have only recently begun to understand the importance of this problem and the fact that there are effective tools to remedy it. We believe that the workplace must assume a leadership role in combatting substance abuse commensurate with the importance and potential impact of substance abuse in our society.

A COMPREHENSIVE WORKPLACE SUBSTANCE ABUSE PROGRAM

The Department of Labor believes that the best way for the workplace to assume this leadership role is for each workplace in the nation to establish a comprehensive substance abuse program which meets the specific needs and culture of that individual workplace. While we recognize that such a goal is an "ideal" -- particularly for small businesses, it serves to keep the focus on what we believe is the most effective action that employers can take to deal with the problem of substance abuse.

While the specific details of a comprehensive program will vary from workplace to workplace, a comprehensive program typically includes five components:

> A Written Substance Abuse Policy. A written policy reflects the strong commitment of the employer to a workplace free of illegal drugs and other substance abuse.
>
> An Employee Education and Awareness Program. A program of employee education and awareness focuses on the specific dangers of substance abuse. The training builds on the company's substance abuse policy,

explaining why the policy was developed and highlighting the dangers of substance abuse on the job. Such training also helps non-abusers understand the problems of addiction and abuse and how the problems of others affect them.

Supervisory Training Program. A program of management training is needed so that supervisors understand corporate policies on workplace substance abuse and know how to deal with employees abusing or suspected of abusing substances in the workplace.

An Employee Assistance Program. An employee assistance program (EAP), or access to one through a consortium, represents the key building block for employers seeking to assist employees who voluntarily seek help as well as those who may be directed to seek assistance in lieu of disciplinary action.

Drug Testing, as Appropriate. While drug testing is still a highly controversial subject, there is increasing agreement that drug testing in the workplace is an important component of a substance abuse program, particularly when the health and safety of others may be at risk.

Although there is still a need for research to explore and document the effectiveness of different program configurations for specific workplaces, there are important reasons why we believe that implementation of a comprehensive program will result in reduced workplace substance abuse and the problems associated with it. First, this approach necessitates a continuous program addressing substance abuse; we have every reason to believe that one-time training and awareness efforts are ineffective. Secondly, a comprehensive program requires management commitment, a vital element in the success of any corporate effort. Thirdly, a comprehensive program, and especially the EAP component, builds on the long history of success in the area of treating alcohol abuse in the workplace. And finally, a comprehensive program is a humanistic way to meet the needs of both the employer and employee.

SMALL BUSINESS AND WORKPLACE SUBSTANCE ABUSE

In the area of substance abuse, the Department of Labor defines a small business as an establishment employing fewer than 250 employees. Of the 5.8 million private industry establishments, 99.3 percent (5.8 million) have fewer than 250 employees. These establishments of fewer than 250 employ 67.1 percent (approximately 60 million) of the total workers.

Results from the 1988 Bureau of Labor Statistics Survey of Employer Anti-drug Programs (Report 760) found that employers with fewer than 250 employees were less likely to have programs in place to address the problem of workplace substance abuse than larger employers. Given the relatively higher prevalence of programs among larger employers, the Department of Labor strongly believes that small businesses represent the most important segment on which to focus its efforts to address the problem of workplace substance abuse.

The question is asked whether small businesses have as large a problem with substance abuse. Again there are no specific data. However, there is no reason to believe that substance abuse has less of an impact of the small businesses than on large corporations. In fact, some speculate that, as the large companies adopt programs to identify and eliminate substance abusers from their applicant pools as well as their workforce, the substance abuser will, of necessity, move to the small businesses to find employment. Again while we have no specific data to support this idea, we have frequently heard anecdotally that some abusers, rather than accepting offers of help, have opted to seek employment elsewhere so that they can continue their addictive behavior.

Given the occurrence of substance abuse in smaller businesses, the question arises as to why they have fewer substance abuse programs. Discussions with small business owners and representatives as well as those dealing with small businesses indicate that one major reason for the lack of workplace substance abuse programs is the perception on the part of many small business owners that they do not have a substance abuse problem.

However, even when a problem or potential for a problem is acknowledged, many employers feel unable to respond for lack of information, financial constraints, legal concerns, or a variety of other reasons. But, if it makes good business sense to mount a substance abuse program -- which actually adds to the bottom line -- why are so many small businesses reluctant to act?

We believe that the answer to this question is that implementing such a program requires the initial expenditure of "hard" dollars while the benefits returned are "soft" dollars which are typically difficult to quantify and are not immediately realized (i.e., increased productivity, improved morale, lower absenteeism, fewer accidents and injuries, lower health care costs, reduced thefts, etc.). One other possible major disincentive to the establishment of workplace substance abuse programs is the threat of litigation -- specifically, wrongful termination suits brought by employees who are fired for using drugs. Some state court decisions and statutes have allowed employer decisions to terminate employees using drugs to be "second guessed" by juries in subsequent litigation. While this threat of litigation hangs over small businesses and large ones alike, small businesses, unlike large ones, lack the in-house legal staffs and other resources that are needed to defend against these lawsuits. Thus, many small businesses may believe that establishing workplace substance abuse programs will open a "Pandora's box" of litigation that is best left closed. In addition, some state legislatures and courts have drastically restricted the rights of employers to use drug testing, which many employers believe is an integral part of any workplace substance abuse program. Other significant disincentives to the establishment of comprehensive workplace substance abuse programs include lack of information on the extent and impact of workplace substance abuse, lack of information on the effectiveness of various workplace programs, lack of cost-benefit data to substantiate initial and on-going investment, and lack of affordable technical assistance and targeted materials to assist in needs assessment and program implementation.

DEPARTMENT OF LABOR INITIATIVES IN WORKPLACE SUBSTANCE ABUSE

The workplace substance abuse initiatives administered by the Department of Labor are focused on three areas: research on the incidence and impact of workplace substance abuse and efforts to assist workers; the provision of information and assistance to employers and employees; and the promotion of employee assistance programs through a nationwide grant program. We believe our programs are an important piece in the overall strategy to promote drug- and alcohol-free workplaces.

Research on Workplace Substance Abuse

Section 4303 of the Anti-Drug Abuse Act of 1986 (P.L. 99-570) passed in October, 1986, mandated the Secretary of Labor to collect information on the incidence of drug abuse in the workplace and efforts to assist workers. The statute also authorized the Secretary to conduct additional research to assess the impact and extent of drug abuse and remediation efforts.

A report on the work undertaken in response to this mandate was submitted to Congress on August 2, 1990. This report presented the consolidated findings and conclusions of all the projects undertaken in response to the Act. Although not designed to specifically address the problems of substance abuse in small business, many of the studies are of interest to or are generally applicable to small business. These findings are summarized below.

Relatively little information was available on a nationwide basis regarding the extent of private sector drug testing. In order to broaden knowledge about the prevalence of drug abuse in the workplace, the Bureau of Labor Statistics (BLS) undertook the Survey of Employer Anti-drug Programs. The survey clearly showed that the most important factor with regard to the incidence of workplace anti-drug programs was establishment size -- the larger the establishment, the more likely it was to have a written policy, an EAP, or a testing program.

There is still an urgent need for more information about the incidence and prevalence of substance abuse in the workplace. Techniques used for collecting data on substance abuse incidence and prevalence need to be refined and expanded so that the validity and reliability of the resulting estimates is improved.

Employee assistance programs (EAPs) are believed to be the most effective method to assist employees with problems of substance abuse. No one configuration or model of an EAP, however, meets the needs of every workplace. EAPs must be designed to be responsive to particular worksite characteristics.

The reasons most frequently cited by employers, regardless of size, for not having an EAP include cost and the perception of the lack of a drug problem within a particular organization.

Many EAPs are underutilized, both by employees and by management. Reasons for this underutilization may include fear of dismissal, fear of lack of confidentiality, lack of information on accessibility, or poor accessibility to the facility.

Information on the impact of substance abuse on the workplace impact tends to be anecdotal in nature or results from individual perceptions and estimates. Methodologies for measuring the cost impact of substance abuse need to be developed and data collected so that appropriate, cost-effective strategies to address the problem can be developed.

Research on the impact of substance abuse, especially research on worker performance and on worker safety, will require researchers to have more access to private sector data and businesses to have better recordkeeping systems. Issues surrounding the privacy and confidentiality of records are of great concern.

As more and more workplace substance abuse programs are developed and implemented, the need to evaluate the effectiveness of these programs becomes more critical. There does not, however, appear to be widespread agreement on evaluation methodology or criteria; and programs are not regularly reviewed with a view toward assessing their effectiveness.

Health care benefits coverage for substance abuse treatment is a significant factor in successful workplace program; however, the availability of adequate coverage is frequently lacking.

To address some of the research areas identified above, the Department of Labor will be exploring ways to collaborate with the Department of Health and Human Services to evaluate the effectiveness of various workplace programs to address substance abuse. This need was highlighted by the Office of Management and Budget (OMB) in the President's FY 1992 Budget which states that the Department will undertake analyses on the effectiveness of workplace substance abuse programs. Particular attention will be focused on the drug testing and employee assistance components of such programs.

Information and Assistance to Employers and Employees

The Department of Labor has developed three publications addressing workplace substance abuse as the primary tools for providing information and assistance.

The first to be developed, What Works: Workplaces Without Drugs, is a booklet targeting management and primarily addresses the establishment of EAPs. It contains descriptions of EAPs in several different companies including some small businesses.

The second publication is a six-panel pamphlet targeting non-using workers and contains information about why they should be concerned with workplace drug abuse.

The third publication, An Employer's Guide to Dealing with Substance Abuse, was specifically written for the small employer. This booklet contains a brief description of the comprehensive program for workplace substance abuse, discusses federal regulations (including the Drug-Free Workplace Act) which may apply to the employer, and gives a list of resources that the employer can use to assist in establishing a program.

All of these publications are available free-of-charge from the National Clearinghouse for Alcohol and Drug Information. To date, over 1.5 million copies of these publications have been distributed.

The Department is also promoting the five-point comprehensive program, outlined on Page 70 of the recently published President's Drug Strategy, by having the agencies of the Department distribute these publications at various workshops, conferences, and seminars and by having the field staffs of the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the Employment Standards Administration distribute the Employer's Guide during each site visit. In addition, the Department has made multiple copies of its publications available to the Small Business Administration, the Drug Enforcement Administration, and other Federal agencies for distribution through their channels.

In order to expand even further the awareness of the workplace substance abuse problem and what can be done about it, the Department is planning a national information campaign. This campaign will be based on existing communications resources within and outside the Department and will promote, to employers and employees alike, the benefits of a workplace free from substance abuse.

A final area in which the Department of Labor is working to provide information and assistance to the private sector, and particularly to small businesses, is the Drug-Free Workplace Act.

The Drug-Free Workplace Act requires certain federal contractors and grantees to establish drug-free workplace programs. The Federal Government relies on contractor adherence to the contract terms and conditions for compliance. This is the typical method used for most contract provisions to assure compliance.

This Act has tremendous potential for encouraging the private sector to address the problems of workplace drug abuse. The Department of Labor is working with ONDCP and OMB to review the implementation of the Drug-Free Workplace Act and assure that any actions necessary to improve the effectiveness of this program will be taken. The importance of this initiative is highlighted in the National Drug Control Strategy issued in February, 1991.

Promotion of Employee Assistance Programs

Because employee assistance programs are believed to be the most effective method to assist employees with problems of substance abuse, the Department of Labor is actively promoting their establishment. The Anti-Drug Abuse Act of 1988 (P.L. 100-690) contained a provision for the Department to establish a new national EAP Grant Program to assist employers in developing EAPs. The program was announced in the May, 1989, and 23 grants were awarded in September, 1989.

Ten of these three-year grants were awarded to small business associations or coalitions. In addition, a grant was awarded to the Corporation Against Drug Abuse (CADA), of the Washington D.C. metropolitan area to assist them in their efforts to help small businesses establish EAPs.

Although it is still too early to draw firm conclusions about the success of various program models being tried by the grantees, we have gained some insights as a result of the activities to date.

> Small companies are quick to recognize problems in their workforce but do not tend to perceive a problem as being related to substance abuse. Many are reluctant to become

involved in a program that could be perceived by the public as an admission that they have a substance abuse problem in their workplaces.

The EAP is a much more difficult concept to market to small business than was originally thought, especially when the sole focus of the program is on substance abuse with its increasing social stigma.

Many small businesses operate "close to the margin" and believe it is less expensive to terminate employees with problems than to help them get well.

Introducing a new concept such as the EAP into a business community takes much time and effort. It is more successfully marketed when a businessman approaches his or her peer than when an EAP provider approaches a company.

To help promote awareness of the EAP services in the communities being served by these grants, the Small Business Administration's District Offices are undertaking an initiative to inform small businesses of the existence of these programs and how they may be able to avail themselves of the services being offered. It is hoped that this effort will result in broader participation and thus allow the small business consortia to remain viable when federal funding is terminated.

DRUG TESTING

Before concluding my testimony, I would like to turn to the issue of drug testing in the workplace. Data from the 1988 BLS Survey of Employer Anti-drug Programs on the prevalence of workplace drug testing programs by establishment size is contained in Chart 1.

CHART 1

Establishment Size (Number of Employees)	Percent with a Drug Testing Program
1- 9	.8
10- 49	6.4
50- 99	12.4
100- 249	17.2
250- 499	29.7
500- 999	30.6
1000-4999	41.8
5000 plus	59.8

The survey also found that establishments in mining (including oil and gas extraction), communications and public utilities, and transportation were the most likely to have testing programs, partly because of regulatory requirements but also because these tend to be larger corporations. Establishments least likely to have testing programs included those in the retail trade, services, and construction industries, areas dominated by small businesses.

Of those employees tested, the BLS found that 8.8 percent tested positive for drugs. This figure, however, should not be generalized to the entire work force because of the small proportion of employers who test and because so much of the testing is performed on employees suspected of using drugs.

The BLS survey found that workers in the wholesale and retail trade, typically small businesses, had the highest number of positive drug tests (20.2 and 18.8 percent respectively). The high positive rate in wholesale trade is probably due to the fact that 90 percent of the establishments in that industry only test those suspected of using drugs. Overall, workers in these industries were less likely to be tested than workers in the construction, communications and public utilities, and transportation industries. The percent of workers testing positive by industry sector are reflected in Chart 2.

CHART 2

Wholesale Trade	20.2 %
Retail Trade	18.8 %
Durable Goods Manufacturing	12.1 %
Construction	12.0 %
Nondurable Goods Manufacturing	8.9 %
Communications and Public Utilities	7.8 %
Mining	6.1 %
Transportation	5.6 %
Services	3.1 %
Finance, Insurance, and Real Estate	0 %

Of the 3.9 million job applicants who were tested, the BLS found 11.9 percent tested positive for drugs. This figure may underrepresent the number of applicants using drugs because applicants are usually advised ahead of time they will be tested. As with employees in wholesale and retail trade, applicants for jobs in these industries were more likely to test positive for drugs than applicants for jobs in other industries. The percent of applicants testing positive by industry is reflected in Chart 3.

CHART 3

Retail Trade	24.4 %
Wholesale Trade	17.4 %
Nondurable Good Manufacturing	12.7 %
Mining	12.7 %
Construction	11.9 %
Durable Good Manufacturing	11.2 %
Services	9.9 %
Transportation	9.9 %
Finance, Insurance, and Real Estate	6.7 %
Communications and Public Utilities	5.5 %

Many of the findings of the BLS survey confirmed findings of other, smaller surveys that have been conducted: drug testing is more prevalent in larger establishments than in smaller ones, current employees are most often tested for reasonable suspicion than for any other reason, testing programs are more likely to target job applicants than current employees, applicants are more likely to test positive for drugs than current employees.

The survey did not, however, address the issue of the impact and effectiveness of the drug testing program. We believe that this is an area in which research is critical, especially research that would address the relative impact and effectiveness of drug testing as opposed to -- or in conjunction with -- other components of a comprehensive workplace program and that would address its impact and effectiveness in the small business arena.

IMPLICATIONS FOR FUTURE ACTIVITIES

The work undertaken by the Department of Labor offers important insight into the problem of workplace substance abuse. The outcome of these efforts has afforded the Department of Labor a greater understanding of the issues surrounding workplace substance abuse and many of the necessary elements and actions necessary to successfully address the problem. To summarize our findings, we present the following conclusion.

- All workplace projects and initiatives need to address the greater issues and problems of workplace substance abuse rather than just the narrower problem of illegal drug abuse.

- Coordinated research and information collection efforts need to be undertaken to improve the quality and quantity of information available on all aspects of workplace substance abuse. The private sector must be encouraged to participate in this effort.

- Awareness of workplace substance abuse issues and problems needs to be raised through implementation of a major informational campaign targeting both employers and employees and focusing primarily on smaller establishments.

- Materials to assist in the development and implementation of comprehensive workplace substance abuse programs and the Drug-Free Workplace Act need to be made available to employers. These materials need to be specifically targeted to address the special needs and concerns of employers of various sizes -- and especially small and medium size businesses -- and in particular industry sectors.

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STATEMENT ON

PROBLEMS OF SUBSTANCE ABUSE IN THE WORKPLACE

BEFORE THE

HOUSE SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES AND ENERGY

BY

SUSAN A. BERGER, Ed.D.

MARCH 8, 1991

Mr. Chairman and members of the subcommittee. I am Dr. Susan A. Berger, Director of the Small Business Project for the Corporation Against Drug Abuse (CADA). On behalf of CADA, I thank you for the invitation. I am pleased to have the opportunity to comment on the problems of substance abuse and the effects of the Drug-Free Workplace Act on small businesses.

CADA is a non-profit organization formed in 1988 by the major private sector employers in the Washington metropolitan area. There are currently 47 members of the Board of Directors representing major corporations, health and educational institutions.

Its goals are to prevent substance abuse in the workplace and among youth and to establish model programs which can be replicated in other parts of the country. The Small Business Project, funded

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solely through a major Foundation grant and private contributions, is one of its primary initiatives. Recognizing that over 97% of this region's employers have fewer than 100 employees, indeed 94% have fewer than fifty employees, CADA has determined to identify and implement the most effective workplace prevention programs to meet the unique needs of small companies.

Our approach is to create a small business consortium to organize small employers, or "aggregate demand", so that they can collectively purchase cost-effective Drug-Free Workplace programs, **including Employee Assistance Programs (EAPs) and managed mental health benefits**, comparable in service, quality and price to those available to large employers. The results of these programs will enable small employers to identify, refer, treat, and ultimately retain employees who experience substance abuse problems. These programs will also enhance their productivity, profitability and competitiveness in a continually uncertain economic environment.

Extent of the problem

National data from the National Institute of Drug Abuse Household survey indicate that 75% of drug users are employed. A U.S. Chamber of Commerce survey, conducted in 1990, showed that of those who use drugs, 75% use drugs on the job, 44% sold drugs to other employees, and 18% stole from other employees to support their habit. Given that the 20 million small employers in the country employ over half of the private sector workforce and represent the greatest growth in new jobs, it is imperative that small employers be given every opportunity and form of support necessary to address their substance abuse problems.

Whether a business is large or small, the impact in human and economic terms is great. Substance abuse seriously affects people, productivity, and profitability. However, because small businesses have fewer employees and fewer slack resources to handle unanticipated expenses, every person and every dollar counts, and the loss of these assets can be devastating in terms of quality, competitive advantage, customer service and cost. Therefore, the impact of a substance abuse problem on a small business is disproportionate. Let me give you several examples:

- An employee of a 60-employee contracting firm driving a $35,000 company truck "gives the truck away in a crack deal." In another firm, an employee turned himself into the police after selling the company's tools for cocaine.

- A local professional services firm employing 350 people experienced forty accidents with company vehicles in one year. With a $1,000 deductible automobile insurance policy, those claims cost that firm $40,000 in unanticipated expenses, not to mention the premium increases and replacement costs in subsequent years.

- A high-tech company with 30 employees feared the loss of one of its key software products because the senior manager they suspected of cocaine addiction was in singular control of the information about the product design and operation.

These examples are just the tip of the iceberg, but they demonstrate how vulnerable a small business is to the problem of even one substance-abusing employee.

Effectiveness of the Small Business Response

Based on the research our project has conducted during the past year, small employers have had more difficulty in addressing substance abuse in the same way large businesses have. These problems lie in two major areas: (1) EAPs and testing, and (2) health benefits coverage.

EAPs and Testing Programs

First, like large businesses, small businesses represent many diverse sizes and industries, but they are widely dispersed geographically and each company operates independently. As a result, EAP providers who have attempted to reach them through marketing efforts and develop programs individually tailored to a particular business, find that it is more time-consuming, more labor-intensive and therefore more expensive to serve small employers. The economies of scale found in large companies are simply not available.

That is why the costs of purchasing drug-free workplace programs - consultation, legal advice, EAPs, and testing - can range from 50% to 300% higher than for large companies.

Second, smaller companies frequently do not have written personnel policies, or formal ways of resolving employee problems, related to performance or personal matters. Until a small business has about fifty employees, most small businesses do not have a human resources department and staff. Human resources professionals have specialized expertise in personnel issues including EAP, benefits planning and management, staff development programs for management and supervisor training, as well as special knowledge of problems, including substance abuse, which affect employee performance.

As a result, some small employers do not recognize performance problems related to substance abuse, or believing they can "take care of their own," their attempts to deal with the problems themselves backfire. Consequently, they may suffer declines in productivity and increases in operating costs which they have not associated with substance abuse.

A small percentage (under 9%) have instituted testing programs and termination policies, firing the employee without providing any opportunity for rehabilitation and returning to the job. Since the average cost of replacing just one employee is approximately $7,000, the cost of providing an Employee Assistance Program through a small business consortium for one year can be a cost-effective investment.

For example, in CADA's Small Business Consortium, the cost of an EAP will be under $40 per capita, 44% lower than one of the leading EAP providers market price currently available in this region. For a company with one hundred employees, the total cost would be about $3,600, almost half the cost of replacement.

Health benefits

The second problem is employee health benefits which include coverage for substance abuse treatment. Unlike large employers, small employers are subject to underwriting and exclusions, and do not have access to managed care networks which offer both quality and efficiency. If they can obtain health benefits for their employees, and in the Washington area over 90% do provide this benefit, they pay exponentially higher rates than large employers, frequently for poorer coverage.

EAPs and other Drug-free workplace mandates will not be effective unless treatment and coverage are included in an integrated managed care package made affordable and accessible to small businesses.

Impact of Federal Initiatives

The Drug-Free Workplace Act of 1988 (the Executive Order 12564 does not apply to private sector employees) has required all employers, including small employers, with government contracts to develop drug policies. We believe that the Drug-Free Workplace Act has had a positive effect in raising awareness about substance abuse problems. Many small employers have forged excellent policies and programs with the Drug-Free Workplace Act as the incentive. For many others, however, it is merely a matter of paper compliance, completing the necessary forms as part of a contract package.

In our view, the Drug-Free Workplace Act does not go far enough. It requires neither an Employee Assistance Program nor drug testing, as do the Department of Defense and Department of Transportation regulations. Both of these programs are useful for identifying and treating employees with drug problems. Furthermore, none of these laws and regulations acknowledge alcohol problems in the workplace, which continue to have by far the most serious and damaging effects on safety and productivity.

Finally, there are no provisions for benefits coverage for rehabilitation, if needed. **Without an integrated concept of workplace substance abuse prevention - including policies, programs for EAP and testing, and the benefits to cover the costs of treatment - the mandates to provide a drug-free workplace cannot be fully effective.**

Federal agencies and private provider cooperation

In its February, 1991 National Drug Control Strategy, the Office of National Drug Control Policy acknowledged the difficulties small and medium-sized companies experience. In response, it cited the expansion of "technical assistance and information dissemination" the Departments of Labor (DOL) and Health and Human Services (HHS) will provide in the coming year. In addition, it noted that the National Institute of Drug Abuse (NIDA) will continue to "support research on the impact of drugs in the workplace as well as the costs and benefits of various substance abuse programs."

In spite of the stated objective to assist small employers, we believe that the Federal initiatives focused on the workplace, and small employers in particular, are inadequate. Putting the problem in perspective, workplace substance abuse threatens the economic viability of our businesses domestically and our competitiveness in the global marketplace. Furthermore, the private sector, and small businesses who employ more than half of the nation's workers, employ the parents of our future workforce. Yet, the 1991 National Drug Control Strategy, a document of almost 200 pages, contained only three and a half pages on the workplace!

As for the other Federal agencies, to our knowledge, the Small Business Administration does not involve itself with drug-related issues in small businesses, has no position on the drug-free workplace and provides no technical assistance on substance abuse in the workplace at this time.

The National Institute of Drug Abuse (NIDA) is primarily a research agency, whose main focus has been on the impact of drugs on the workplace, though it funds the Employer Helpline, and several education and training pilot projects for the workplace. It funds such studies as "drug use as a risk factor in workplace-related accidents and injuries," the effects of drug use on work performance, job performance standards to detect drug use, research to compare and contrast prevalence estimation techniques, and evaluation of the quality of work life and health promotion in preventing or reducing drug abuse. While these may have some long-term impact, these initiatives do not assist businesses or providers with their immediate needs for programs which intervene in their problems.

Based on our experience, the Department of Labor is the only Federal agency which has provided contract dollars to institute EAPs and drug-free workplace programs in small companies. CADA received a contract last year to develop materials and provide training to small employers to develop and implement substance abuse programs. Although this project was successful and the DOL staff was highly supportive of our work, they did not have the necessary funds to support the continued distribution of these materials, thus limiting the potential effectiveness of the project.

Nevertheless, we believe that DOL is the most qualified Federal agency to deal with workplace issues and we would support them in taking a leadership role in coordinating the strategy for solving workplace substance abuse problems.

— An enhanced strategy for workplace substance abuse

As a private sector organization, CADA has seen business benefit from these programs and is committed to assisting employers, large and small, in developing policies and programs to achieve a drug-free workplace. We believe we have the specialized expertise and business perspective required to effectively educate, market and persuade employers to invest in Drug-Free Workplace Programs. We have developed a coordinated and integrated approach to accomplishing this objective -- but the private sector cannot do it alone. Vigorous Federal leadership and designated resources for small businesses are required along with a coordinated strategy which targets specific workplace prevention activities. These include:

- Start-up funds to assist business organizations like CADA in designing and delivering affordable and accessible drug-free workplace programs relevant to small businesses;

- Technical assistance on legal and human resource issues employers should anticipate related to establishing EAP and testing programs, in addition to consultation on the design of the programs themselves;

- **Public education campaigns, targeting small employers, which inform them of the symptoms and results of workplace substance abuse, and what they can do about it;**

- **Demonstration projects to test innovative models. For example:**
  - vertically integrated workplace substance abuse programs - EAPs, testing, health benefits and human resource policies;
  - creative mechanisms for reaching small employers;
  - new approaches to collective purchasing;
  - management information systems for small employers; and
  - cooperative arrangements between large and small employers for access to managed care programs, including EAPs and health and mental health benefits.

Conclusion

Substance abuse in the workplace is one of the most serious problems facing the country today. The Corporation Against Drug Abuse appreciates your concern about Federal assistance to the private sector in solving these problems. We look forward to working with you and members of your staff to develop responsive and constructive approaches to these problems. I commend the Chairman and members of the Subcommittee for your efforts.

Thank you for your consideration of our views.

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BACKGROUND ON CADA

CADA is a nonprofit, publicly supported charity (a non-private foundation), federally tax-exempt under Section 501(c)(3).

CADA was formed in the fall of 1988 by the Washington metropolitan area community, consisting of the major private sector employers and educational and health organizations. The organization's offices are in Washington, D.C., but it operates region-wide. There are currently 47 members of the Board of Directors who are heads of major area organizations. Ten of the organizations are in Virginia, ten in Maryland, 26 in the District of Columbia, and one in New York. Many are national organizations headquartered elsewhere but with a major presence here.

The problems CADA focuses on are overseen by board committees, but have non-board members as well, as necessary. The Board and other volunteers involved with CADA work on specific assignments and on other matters as they arise. CADA has more than 100 volunteers working on youth prevention, workplace and data efforts. It also has one full time loaned executive and three part time volunteers on staff.

CADA was created resulting from a 1988 RAND Corporation study of the region's substance abuse problems and programs. That study, commissioned by CADA's organizers, showed that metropolitan Washington has one of the worst substance abuse problems in the United States. The problem was determined to be an area-wide problem, not confined to the District of Columbia or inner-city.

These and other specific findings galvanized the community to form CADA to take action, as mentioned. CADA was formed to focus the area's substance abuse efforts on three subjects: prevention among youth, ending substance abuse in the workplace and development of good, reliable data. CADA's operating principles are to: 1) focus on long term, not "quick fix", solutions; 2) develop a strategic plan for each problem area; 3) design model, replicable programs appropriate for this area, but exportable to other areas; 4) concentrate on the region; 5) make maximum use of volunteers, maintaining a small professional staff for facilitation, coordination and special projects; and 6) finish its agenda and go out of business by the end of 1993.

CADA is an action-oriented, not a research, organization. However, if research is necessary to find the proper solution, CADA will undertake such research. For example, seven months were devoted to national research to identify successful youth prevention programs, and design CADA's program based on the resulting "best practices." CADA's prevention program is now starting to be implemented.

CADA
CORPORATION
AGAINST DRUG ABUSE

Small Business Project

Small employers (those with under 500 employees) often have severe human resources workplace/work force problems, but have limited resources with which to develop Employee Assistance Programs (EAPs) and drug related programs. For example, only 33% of such employers in this area have policies or programs on drugs in the workplace. At the same time, service providers find it difficult to market to these employers because of the small number and size of the employee force as well as the prevailing cost factors. This is especially true for the 97,000 area employers with fewer than 100 employees. The result is that small employers are not being reached. Small employers employ more than 800,000 people in the Washington metropolitan area, about half of the private work force. Thus, there is a substantial problem, need and market.

CADA's Small Business Project was started in response to these facts. Our purpose is twofold:

1) To meet the needs of small business, to create a Consortium for small employers to provide the buying power to negotiate for and purchase good workplace drug program services, including EAPs, at favorable prices. It is intended that, through membership, the Consortium will arrange for these services to be provided at affordable prices and that the Consortium will become self supporting and independent. Further, the Consortium will be designed and implemented so it may be replicated elsewhere, since many metropolitan areas in the country have a similar problem.

2) To assist in this process, the Project will develop alternative treatment models, test them in large business settings and negotiate with insurers to redesign health benefits to cover these models. These benefits will then be made available to small employers to assist them in providing health benefits which are affordable and cost-effective.

These objectives are consistent with CADA's overall mission to promote drug-free workplaces for all metropolitan area employers and employees and to help prevent the use of illegal substances.

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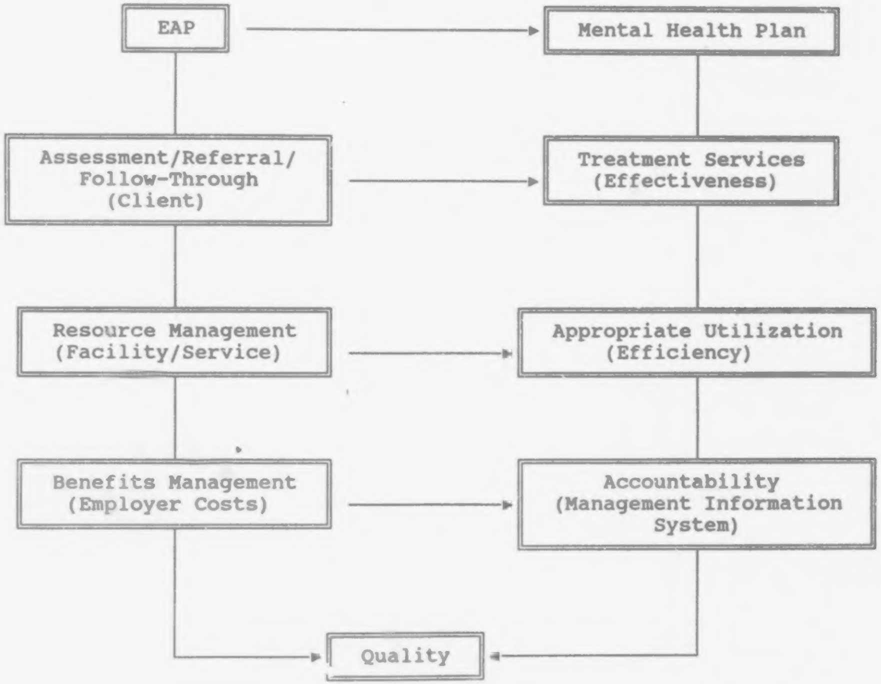
CORPORATION AGAINST DRUG ABUSE

INTEGRATED MENTAL HEALTH/SUBSTANCE ABUSE SYSTEM

A MANAGED CARE MODEL

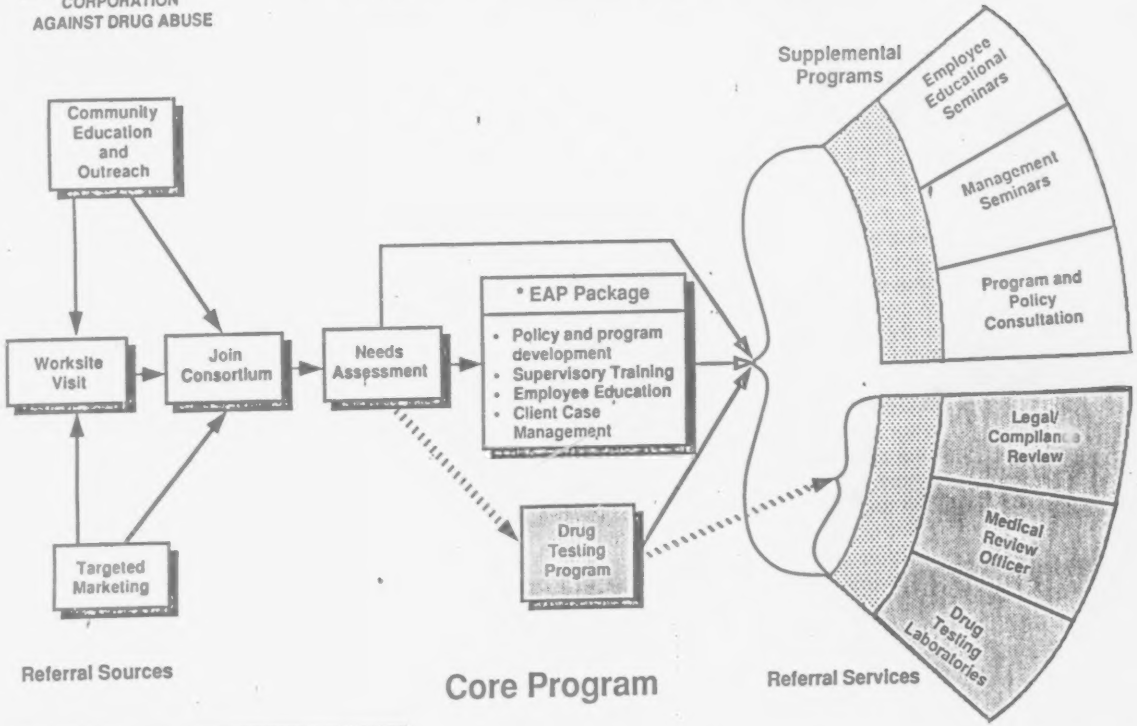

EAP
Mental Health Plan
Assessment/Referral/
Follow-Through
(Client)
Treatment Services
(Effectiveness)
Resource Management
(Facility/Service)
Appropriate Utilization
(Efficiency)
Benefits Management
(Employer Costs)
Accountability
(Management Information
System)
Quality

ab = rwjfsbp\mcmodel

ab 2/91

CADA
CORPORATION
AGAINST DRUG ABUSE

Consortium Program Plan


Community Education and Outreach
Worksite Visit
Targeted Marketing
Join Consortium
Needs Assessment
* EAP Package
• Policy and program development
• Supervisory Training
• Employee Education
• Client Case Management
Drug Testing Program
Supplemental Programs
Employee Educational Seminars
Management Seminars
Program and Policy Consultation
Legal/ Compliance Review
Medical Review Officer
Drug Testing Laboratories
Referral Sources
Core Program
Referral Services

KEY:

▨ Referrals only. These services will not be provided by the consortium.

* EAP: Employee Assistance Program

United States House of Representatives

Committee On Small Business

Subcommittee on Regulation, Business Opportunities and Energy

Substance Abuse in the Small Business Workplace

March 8, 1991

Presented By

Bill Jernberg

President, The Jernberg Corporation

for

The Employee Assistance Professionals Association, Inc.

Mr. Chairman and members of the Subcommittee, it is an honor to testify at this hearing on programs and policies targeted at assisting small businesses address drug and alcohol problems in the workplace. My name is Bill Jernberg and I'm here today testifying on behalf of the Employee Assistance Professionals Association (EAPA). EAPA represents employee assistance practitioners from labor, management and independent service providers throughout North America. EAPA has seventy-nine (79) chapters throughout the country and over 6,800 members, making it the largest EAP association.

I am the President of The Jernberg Corporation which delivers employee assistance program (EAP) services to 250 companies and 1200 professional organizations such as medical clinics and law firms throughout the United States and Canada. Many of the companies we work with are small businesses. We have developed a unique relationship with The Paul Revere Life Insurance Company in order to provide EAP services to small employers. Paul Revere underwrites the cost of EAP services provided by my company for select policyholders.

Drug and Alcohol Problems Within Small Businesses

EAPA has a strong interest in addressing the problem of drug and alcohol problems in small businesses - a work environment that has been largely ignored. Clearly, drug and alcohol problems play a significant role in small business as evidenced by the following statistics generated by 1,479 companies employing 80,051 people (average size = 54) located in 50 states. During 1990, 3,602 people, or 4.5% of the total employee population utilized the broad-brush EAP. Sixteen percent of the cases involved drug and alcohol problems; 50% of "marital/family" problems and 30% of the "psych / emotional" problems were linked to drug and alcohol dependence. Thus 1,476 or 41% of 3,602 EAP covered employees and their family members sought help for drug and alcohol problems.

The level of awareness that small business employers have about the magnitude of drug and alcohol problems is not realistic. The extent of the problem is minimized if not denied. Small businesses generally deal with workplace substance abuse problems only when there is no way to *avoid* dealing with it. Statistics tend to bear that out.

If we believe nationally accepted prevalence data, 10% of the employees covered under The Paul Revere/Jernberg EAPs suffer some kind of serious negative consequences. In 1990, that would have produced 8,005 substance abuse cases. In actuality, we dealt with 1,476 cases or 1.8% versus 10%. We have found that line supervisors, middle managers and CEOs tend to "tolerate and cover-up" until the substance abuser's performance/behavior becomes intolerable, at which point the employee is terminated. When we compare the numbers of substance abuse cases actually identified with the potential numbers, one realizes we are merely scratching the surface.

EAP Service in Small Businesses

EAPs in small business is a world apart from EAPs in larger businesses and industry. First from an awareness standpoint 75-80% of the Fortune 500 have EAPs, but somewhat less than 10% of small businesses have EAPs. We are years behind "big business" and are still educating small business employers about what an EAP is.

The astute small business owner thinks EAPs are only for big business and the average small business owner has never heard of an EAP. EPA yes, EAP no!

Many also do not understand the full range of services provided by an EAP. For the sake of clarity, EAPA defines an EAP as a work-site based program designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns including, but not limited to, alcohol, drug, health, marital, family, financial, emotional, stress or other personal concerns which may adversely affect employee job performance.

The specific core activities of EAPs include: (1) expert consultation and training to appropriate persons in the identification and resolution of job performance issues related to the employee concerns listed above; (2) confidential, appropriate and timely problem-assessment services; (3) referrals for appropriate diagnosis, treatment and assistance; (4) establishing linkages between workplace and community resources that provide such services; and (5) follow-up services for employees who use those services. I have attached

EAPA's legal definition to my testimony. (See Attachment A.)

EAPs are under represented in small business for a variety of reasons. Interesting, we have found that cost is an insignificant factor and certainly does not impede the growth of EAPs in the small business community. Even in situations where the small employer can have an EAP at no cost (insurer picks up the cost as in the Paul Revere/Jernberg Corporation EAPs), only about 10% of the companies elect to have one. The reason for refusal of the free EAP is typically, "we don't have those kinds of problems here."

Another significant factor is that very few EAP firms want to do business with small firms and thus, do not market their services toward the small business. Unless done in a consortium or by an agency under a grant, it is not a profitable line of business. If not mass-marketed through The Paul Revere which eliminates the selling expense, Jernberg could not continue to do it.

More insurers, particularly health care carriers, need to be introduced to the process. It is the insurer who stands to make the significant and measurable financial gains by sponsoring EAPs. For example, The Paul Revere conducted a 40 month EAP study of 63 companies employing 11,790 people of diverse geography and occupation. It estimates that for every $1.00 of premium diverted to the EAP, a savings of $4.23 is realized in the area of claims expense. It is expected that carriers whose line of insurance is in medical care coverage (versus disability income) the rate of return would be significantly higher.

Finally, health insurers are going to have to re-examine benefit structures. Most carriers encourage the use of expensive inpatient models when outpatient treatment could be effected with a better outcome and for 10-25% of the cost of inpatient.

In this same vein, it is becoming increasingly important for the EAP to function as a "gatekeeper" and in the role of "managing" health care. A primary reason for this is to help the employer contain medical care costs by eliminating unnecessary or inappropriate and expensive care. Examples include the employee admitting himself/herself to an expensive inpatient treatment facility when a less expensive outpatient program would have sufficed. Another common example we see is the results of a single parent responding to the ad on television that says "send me your troubled teenager and we will straighten her/him out." What the psychiatric facility does not discuss is cost or treatment outcome. For the EAP to work effectively as a gatekeeper, there must be some incentive for the employee. Companies we work with will generally provide incentives through the medical care coverage, i.e. reimburse at 80% with EAP clearance, 50% without our make the employee deductible lower if the EAP is used.

The Federal Response to Drug and Alcohol Problems in Small Businesses

The federal government in recent years has played a limited role in educating owners of small businesses about drug and alcohol use in the workplace and assisting them in establishing or accessing EAPs. This limited involvement sharply contrasts efforts in the early 1970's when the National Institute on Alcoholism and Alcohol Abuse (NIAAA) awarded grants to each state to hire staff to work with employers to establish EAPs. While many of the state offices that were developed as a result of that grant program no longer exist, their efforts live on. Staff still promote EAP efforts and programs that were initiated still provide assistance to companies that need help in establishing workplace programs.

The current efforts are spearheaded by the National Institute on Drug Abuse (NIDA) and the Department of Labor (DOL). NIDA's Division of Applied Research has established an "800 number Help-Line" that was established primarily to assist businesses comply with the 1988 Drug Free Workplace Act. Recent reports on the Helpline indicate that over half of the 1000 monthly calls come from small businesses. The three principle areas of concern are drug testing programs, workplace policy development and employee assistance programming. The Helpline does not have the expertise in employee assistance programming and thus routinely refers questions about EAPs to EAPA.

In addition, NIDA has implemented a technical assistance program to assist small and medium sized businesses in ten states establish drug free workplace policies and programs. The program involves one workshop with a minimum of 100 participants in each state and post-workshop technical assistance to participating businesses. EAPA has participated in the program. The primary limitation of the program is that it has minimal funding and, thus, cannot provide the on-going assistance that will be necessary.

The effectiveness of NIDA's efforts may be undermined generally because the Division's most visible activities in the workplace context have related to drug testing. NIDA took the lead in organizing the implementation of the President Reagan's Executive Order 12564 that requires drug testing in all federal agencies. EAP professionals and others in the drug and alcohol field view drug testing as having a limited role, preferring instead to rely on work performance as the single most important factor in identifying individuals in need of assistance. Thus, NIDA's efforts could be greatly enhanced by promoting a more comprehensive model that focuses on employee education, supervisor training, and performance based referral for treatment.

The Department of Labor (DOL) has administered one small grant program, established under the Anti-Drug Abuse Act of 1988, that provides assistance to businesses to establish EAPs. The DOL program has been funded at $2 million since FY 1989 and provides funds to twenty-two public and private organizations, including universities, chambers of commerce, and hospitals. The program has gone well, notwithstanding limited funds, and has provided DOL with a good model for expanding efforts to reach the small business owner in smaller communities.

The primary roadblock in expanding this program is lack of resources. The DOL has a keen interest in expanding the availability of EAPs to small businesses and could do so

effectively if it were given funds to develop model EAP consortia. EAPA has developed proposed legislation that would expand the DOL's authority in this arena. I have attached that proposal to my testimony. (See Attachment B).

The Small Business Administration (SBA) has not played any role, to our knowledge, in educating small business owners about drug and alcohol use in the workplace or assisting them in providing EAP services to their employees. This is a critical missing link because the SBA has the greatest access to the small business owner.

The SBA could carry out many initiatives. First, the SBA should be encouraged to take the lead in surveying small businesses to determine their level of knowledge about drug and alcohol problems and their needs in this area. Upon identifying the needs, SBA could play a major role in providing educational materials to small business owners as well as to their employees. It would be particularly important for the SBA to educate employers and employees that drug and alcohol problems exist in small companies as well as large companies, and that they are health problems that can be treated if individuals come forward for treatment. This will reduce the stigma that is attached to drug and alcohol problems and help end employer denial about the existence of drug and alcohol problems. Secondly, the SBA would also be able to work closely with local Chambers of Commerce and help them organize EAP consortia for small businesses. Finally, the SBA could encourage insurers, primarily medical care carriers, to examine the cost-savings associated with EAPs and help to underwrite the EAP's cost thus, minimizing or eliminating the

expense to the company. Paul Revere has done this successfully for six years in its medical care, weekly income, and long term disability products.

Impact of the Drug Free Workplace Act on Expansion of Employee Assistance Programs

Congress passed the Drug Free Workplace Act in 1988. The Act has had a very limited impact on expansion of Employee Assistance Programs, and has, in fact, been viewed by some as lacking the correct model for assisting individuals in the workplace.

The Drug Free Workplace Act does not require the implementation of EAPs. What it requires contractors or grantees to do, among other things, is establish an on-going drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the grantee/contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed for drug abuse violations that occur on the premises. Employers who are covered under the Act are only required to report to the appropriate federal agency incidents of convictions for drug-related offenses that occur at the worksite. Finally, the covered employer can take disciplinary action against any individual who is convicted of a drug-related offense at the worksite or can require such as employee to participate in a drug assistance or rehabilitation program.

While the Drug Free Workplace Act has focused attention on the issue of drug use in the workplace and promotes education about the issue, it has not promoted the establishment of comprehensive EAPs. Apart from not requiring every covered employer to establish or provide access to an EAP, the law has several deficiencies.

First, the Act focuses only on drug use, not the significantly greater problem of alcohol use. It is widely recognized that alcohol use is the nation's number one drug problem and has a far more detrimental effect in the workplace than drug use.

Second, the Act does not follow the traditional EAP model that stresses performance-based referrals to treatment. As noted above, the Act only requires employers to take action against individuals who have been convicted of drug related crimes. Thus, the basis for referring an individual to treatment (if that is what the employer decides to do) is criminal activity. The EAP model, in contrast, stresses close monitoring of work performance and referral to a trained EAP professional when an individual presents a pattern of declining work performance. As we discussed earlier, the EAP model stresses that managers or supervisors should not try to diagnose the cause of an employee's problem, but simply refer the individual to one who can do so. The EAP professional will then refer the individual to appropriate treatment -- whether that is drug or alcohol treatment, mental health treatment or some other kind of counseling, such as financial or family counseling -- and monitor compliance with treatment.

Thus, the Drug Free Workplace Act's focus on "diagnostically-trained" supervisors refutes the comprehensive EAP model. As a result, it has been viewed by some as a set back for EAPs.

The Office of National Drug Control Policy

The Office of National Drug Control Policy (ONDCP), established under the Anti-Drug Abuse Act of 1988, has responsibility for establishing policy about and coordinating all the federal government's drug control activities. ONDCP's Third National Drug Strategy, as well as the previous strategies, does not, in our view, place adequate emphasis on education, prevention and treatment activities. The three national strategies have repeatedly recognized that supply and demand efforts must work hand-in-hand. But resources have not been invested in treatment and prevention efforts comparable to supply side efforts. The Third National Strategy alarmingly continues the two-year trend of investing 70% of federal resources in criminal justice and interdiction activities and only 30% in treatment and prevention activities. Parity must be established: 50% of the funds should go to education, prevention and treatment activities and 50% to law enforcement.

In addition, the "war on drugs" mentality, which is characterized by the programmatic emphasis on law enforcement and interdiction efforts, has translated into punitive policies that have increased the stigma attached to drug and alcohol dependence. Many policy makers truly believe that if we are mean enough, tough enough and curtail the rights of individuals enough, drug and alcohol dependent individuals will not use alcohol and drugs.

There is not one shred of evidence to support this Draconian approach. Yet, this "get tough" sentiment has resulted in extremely detrimental policies that have increased stigma and will certainly undermine efforts to get individuals into treatment and create safe workplaces. One example is particularly relevant to drug and alcohol use in the workplace.

In 1990, Congress passed the landmark Americans With Disabilities Act (ADA) which extends civil rights protection to individuals with disabilities in private employment, public accommodations and transportation. While alcoholism and drug addictions are defined as disabilities, the ADA explicitly excludes from coverage individuals who currently use drugs illegally, even when the individual is qualified to do the job and even when the individual comes forward for treatment. The Administration insisted on this provision as a condition of signing the bill -- to do otherwise would be seen as being "soft" on drug users. Congress also amended a parallel provision of the Rehabilitation Act which had protected for over 15 years qualified drug users against discrimination. Advocacy groups had to fight just to retain protection for individuals in recovery.

This retrenchment is remarkable considering an estimated 68% of drug and alcohol dependent individuals are employed, businesses have invested considerable resources in Employee Assistance Programs, recognizing the importance of getting employees into treatment early, and employment is one of the most essential factors to sustained recovery.

We are not suggesting that laws like the ADA should protect individuals who pose a threat to a workforce or other individuals. But the law sends a clear message to people who are struggling with their addictions that the climate is hostile and by coming forward for treatment and thereby publicly acknowledging their drug use they may risk the basic underpinnings of existence. We are convinced that this and similar laws will have the effect of driving the problem underground and creating a far more dangerous society.

Workplace Strategies Proposed by the Office of National Drug Control Policy

The Third Strategy provides specific recommendations for dealing with drug use in the workplace. EAPA agrees with many of those recommendations. First the strategy promotes the establishment of comprehensive programs that include: a written policy, an employee education and awareness program, supervisory training, employee assistance programs, and, where appropriate, drug testing. (See National Drug Control Strategy at 70 (February 1991)). Apart from some apparent confusion that EAPs are distinct from education and training (when in fact the EAP provides that education and training), this proposal is totally consistent with EAPA's goals.

Second, the strategy recognizes that small and medium-sized companies have not adopted anti-drug programs. To remedy the problem, the strategy recommends that the Departments of Labor and Health and Human Services expand their technical assistance efforts to assist companies -- particularly small and medium-sized businesses -- establish comprehensive workplace programs. Interestingly, however, the President's FY 1992 budget does not provide funding for the DOL program.

Finally, the third strategy's approach to the issue of drug testing is progressive and again consistent with EAPA's approach. The strategy states that: "Drug testing programs should only be conducted when high standards of confidentiality and accuracy are enforced, and only when an employee assistance program is available for workers who test positive." (See National Drug Control Strategy at 73).

EAPA would urge employers to give employees who test positive an opportunity to get EAP services before being terminated. EAPA has always been concerned that companies will spend $100 to test an employee for drugs, but will not spend one-fourth of that for an EAP. In our view, it is far more beneficial to establish EAPs which can be used to detect individuals with work performance problems 365 days a year rather than implement a drug testing program that tests an individual once or twice a year at best and does not provide any information about whether an individual can perform a job. Indeed, research by the American Management Association has revealed that companies that have implemented an EAP detect a far larger number of individuals with drug problems than companies that only implement a drug testing program.

The Third Strategy's recommendations on workplace issues are a dramatic improvement over proposed model state legislation that the Office of National Drug Control Policy issued last year. Two of the proposed bills -- the Workforce Drug Testing Act and Anti-Drug State Licensing Act -- would undermine efforts to get individuals with drug or alcohol problems into treatment and to have them return to the workplace as productive employees.

The proposed Workforce Drug Testing Act would give employers total discretion in deciding who could be tested and would protect employers against lawsuits challenging their drug testing programs if they implement certain procedural safeguards. The bill would permit employers to require individuals who test positive to participate in a treatment program as part of disciplinary action, but would not require employers to give individuals an opportunity to get treatment before facing disciplinary action or termination. This approach is far less desirable than the Strategy's recommendation that individuals who test positive should be given an opportunity for treatment.

The second proposed state bill, the Anti-Drug State Licensing Act, would mandate the suspension and revocation of professional and trade licenses for persons convicted of drug related crimes. The bill would require individuals who are convicted of use, possession and distribution crimes to identify at the time of sentencing any professional or trade license they hold. The sentencing court would then be either permitted or required to suspend or revoke the license for a particular time based on the severity of the crime.

EAPA agrees that individuals must be held accountable for criminal activity. But revoking licenses of individuals with drug or alcohol problems and thereby eliminating their ability to work will undermine their ability to get into treatment and sustain recovery.

In conclusion, Mr. Chairman, there is much to be done within the small business community to address drug and alcohol problems. We must educate employers that a problem may exist within their workforce and that there are good, cost-effective solutions in the form of employee assistance programs. Federal involvement in this area has been disappointing in recent years, particularly considering the important role of the workplace plays in all of our lives and the fertile opportunity it provides to reach so many individuals. We need an infusion of funds to enable the Department of Labor, the Small Business Administration and the National Institute on Drug Abuse to provide drug and alcohol education and assistance in providing EAP services to owners of small businesses around the country.

EAPA is anxious to provide any assistance you need in this effort. Thank you very much for the opportunity to present our views.

ATTACHMENT A

EMPLOYEE ASSISTANCE PROGRAM

An Employee Assistance Program (EAP) shall be a worksite-based program designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns including, but not limited to: health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

The specific core activities of EAPs shall include both of the following: 1) expert consultation and training to appropriate persons in the identification and resolution of job-performance issues related to the employee personal concerns listed above. 2) confidential, appropriate and timely problem-assessment services; referrals for appropriate diagnosis, treatment and assistance; establishing linkages between workplace and community resources that provide such services; and follow-up services for employees who use those services.

ATTACHMENT B

DRUG FREE WORKPLACE INITIATIVE FOR THE PRIVATE SECTOR

(a) Findings. -- Congress finds that --

(1) alcohol and drug abuse results in lost productivity, increased on-the-job accidents, and lower worker morale;

(2) an employee assistance program is a worksite-based program designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns including, but not limited to, alcohol, drug, health, emotional, marital, family, financial, legal, stress or other personal concerns which may adversely affect employee job performance;

(3) employee assistance programs are one of the most effective ways to intervene with drug and alcohol users and, thereby create safer, more productive workforces;

(4) several groups have established employee assistance programs to assist small businesses in the private sector provide such services to their employees;

(A) the Workers Assistance Program of Texas is a non-profit corporation that establishes private and public sector employee assistance programs with high employee involvement in program development and oversight;

(B) the Employee Assistance of Central Virginia, Inc. is a community based, private, non-profit organization directed by a board of top level chief executive officers from the businesses community that is designed to bring employee assistance programs to all employees and employers in the region;

(C) The Corporation Against Drug Abuse, a Virginia-based non-profit corporation composed of the chief executive officers of 21 businesses, was created to identify model drug abuse programs for local businesses and to pool technical and financial resources to provide such programs;

(b) Sense of Congress. -- It is the sense of Congress that -

(1) all places of work should be drug and alcohol free;

(2) corporate America should take an active role in assisting employees with drug and alcohol related problems, including problems relating to parenting drug and alcohol-involved or drug and alcohol-exposed children;

(3) employers should take the following steps toward creating a drug and alcohol abuse-free workplace --

(A) establish a clear drug and alcohol abuse-free policy, including published expectations of behavior, employee rights and responsibilities, and actions to be taken in response to an employee found to use illegal drugs or abuse alcohol at the workplace; and

(B) establish an employee assistance program for alcohol and drug abusing employees, which shall include:

(1) expert consultation and training to appropriate persons, including supervisors and managers at all levels and union representatives, in the identification of and intervention with persons who have job performance problems arising from drug and alcohol use or other personal concerns identified in subsection (a)(2);

(2) employee education about the risks associated with alcohol and drug use, the facts surrounding drug and alcohol use by children, including the warning signs for identifying drug and alcohol use by children, the employer's drug and alcohol abuse policy, procedures for handling impaired workers, and assistance available for employees and family members, where appropriate, with drug, alcohol or other problems that affect job performance;

(3) confidential, appropriate and timely problem assessment services and referrals for appropriate diagnosis, treatment and assistance;

(4) establishing and maintaining linkages between workplace and community resources that provide services identified in subsection (B)(3); and

(5) follow-up and aftercare services for employees who use the services identified in subsection (B)(3).

(c) Business Participation in Drug and Alcohol Prevention and Intervention.

(1) The Secretary of Labor shall identify 100 business communities containing small business groups in the United States and establish a grant program that awards one entity in each region up to $ 100,000 to establish a program modeled after those identified in subsection (a) to provide employee assistance program services to private businesses, particularly small businesses. The grants may be proportionately divided among public entities, private programs and corporate consortia, as described in subsection (a).

(2) The Secretary of Labor shall consult, provide technical assistance and training to and evaluate the programs to determine the effectiveness of different models in assisting small businesses access employee assistance services.

(d) Authorization of Appropriations. -- There are authorized to be appropriated $ 10 million to carry out subsection (c)(1) and $ 2 million to carry out subsection (c)(2).

News From
Congressman
RON WYDEN

THIRD DISTRICT
OREGON

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PRESS ADVISORY
WEDNESDAY, MARCH 6, 1991

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Workplace Substance Abuse Costs American Economy as Much as $140 Billion Dollars a Year

Federal Programs Under-Funded, Poorly Coordinated

Is American Small Business Becoming Employer of Last Resort for Addicted?

WASHINGTON, D.C. -- The lack of federal programs and dollars to fight workplace substance abuse, and the impact of that abuse on the small business economy, will be the subject of a Friday hearing of the Small Business Subcommittee on Regulation, Business Opportunities and Energy.

Rep. Ron Wyden, D-Ore., the subcommittee's chairman, said that the hearing will focus on the failure of federal programming to meet the workplace treatment objectives of the National Drug Strategy -- the White House-commissioned document which sets out goals in the federal multi-billion-dollar drug war effort.

Wyden said an eight-month investigation by his subcommittee indicated that while an estimated 70 percent of all substance abusers work full- or part-time, "the small business workplace is the forgotten stepchild of federal substance abuse programming." Less than .0002 percent of all drug war funds is earmarked for direct assistance to employers. Wyden argued that there are "virtually no programs, no identification and treatment models, no counseling, targeted at small businesses."

A subcommittee staff memorandum indicated that workplace substance abuse is estimated to cost American business as much as $140 billion per year in increased absenteeism, accidents, healthcare costs and lost productivity. "Helping small businesses solve this problem must be a major objective of the war on drugs," Wyden said. "The ones we've talked to are frustrated--they feel they've been abandoned. They feel they're becoming the employer of last resort for the drug abusing population."

Time and place of hearing as follows:

TIME: 10 a.m.
DATE: Friday, March 8
PLACE: 2359 Rayburn House Office Building
Washington, D.C.

Witnesses will include small businesses from Oregon and Maryland, state drug abuse treatment directors from Oregon, New York and Maryland, and officials from federal agencies charged with directing demand reduction efforts.

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RON WYDEN, OREGON
CHAIRMAN

ELIOT L. ENGEL, NEW YORK
JIM OLIN, VIRGINIA
MICHAEL R. McNULTY, NEW YORK

101st Congress
United States House of Representatives
Committee on Small Business
Subcommittee on Regulation,
Business Opportunities, and Energy
B-363 Rayburn House Office Building
Washington, DC 20515

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TO: Ron Wyden, Chairman, Subcommittee on Regulation, Business Opportunities & Energy

FROM: Subcommittee Staff

DATE: March 4, 1991

SUBJECT: Shortfalls in Federal Programming to Small Businesses for Employee Substance Abuse Identification and Treatment

Has the Government's Underfunded, Poorly Coordinated Approach Stymied Small Employers?

Will Small Businesses Become the Employers of Last Resort for Substance-Abusing Workers?

Workplace substance abuse has reached epidemic proportions in the American economy. A few indicators: (1) substance abusers are 25 to 33 percent less productive; (2) they are three to four times more likely to have job-related accidents; (3) they are two to three times more likely to be absent, and (4) they are three times more likely to file medical claims.

This problem costs the American economy up to $140 billion per year.

At the Chairman's direction, subcommittee staff eight months ago undertook an investigation of federal programming to assist small businesses with workplace substance abuse problems. The goals of this investigation were to determine (1) the strength, character and number of programs, (2) their quality and performance, (3) their coordination with similar or complementary programs at the state and local level, and (4) the degree to which current funding meets the assistance need. Subcommittee findings will be the basis of a planned March 8 hearing on these matters.

In brief, the staff found that the rhetoric of the Administration's war on drugs far out-strips the actual demand reduction efforts -- in particular as they provide real services to employers in need, the nation's small businesses.

> Indeed, less than .0002 percent of all federal drug war funds have been earmarked for direct assistance to businesses for worker substance abuse programming.

These employers generally do not have the cash or the expertise to deal with the growing problem of worker substance abuse. In the view of staff, the shortfall in government programming for small employers aggravates the problem, indeed almost promises a future of substance-abusing workers gravitating to workplaces where they will be least likely to be identified and treated.

> Under this scenario, small business will become the employer of last resort for the 70 percent of the nation's drug users who also are employed, full or part-time.

The Office of National Drug Control Policy (ONDCP -- the office of the "Drug Czar") established a Demand Reduction Working Group charged with oversight and coordination of federal efforts to reduce demand through education, community action, workplace programming and through international programs. Yet, despite the fact that two in three drug users are employed (either full or part-time), and despite the fact that the workplace is specifically recognized in the National Drug Strategy (NDS) as a key demand reduction battlefield, sufficient resources have not been allocated to match the stated commitment.

* The NDS does not identify a specific set-aside for the workplace, nor does the NDS identify increases for workplace based programing as it does for education and community programs.

* Although the Department of Labor (DOL) and the National Institute on Drug Abuse (NIDA) are identified as key players in addressing the problems of drugs in the workplace, their efforts are primarily directed toward research on the scope and nature of the problem.

* NDS instructs both DOL and the Department of Health and Human Services (HHS) to expand technical assistance and information dissemination efforts targeted to small businesses. However, neither DOL or HHS has programming geared to provide direct assistance to implement their advice.

* Of funds identified for workplace programming, the overwhelming majority, $ 1.7 billion slated for 1992, are oriented to drug testing and prevention with only a gesture made toward education and treatment services -- such as Employee Assistance Programs (EAPs).

* Of the over $11 billion dollars now earmarked government-wide for waging the war on drugs, only $2 million is used in direct assistance to small businesses and industries to assist in establishing Employee Assistance Programming (EAPs).

Subcommittee staff attempted to identify the key information access points for employer/employee assistance programming within the far-flung system of federal drug war units. We were continually frustrated by an apparent lack of coordination, information and conviction within the appropriate agencies.

* At the Small Business Administration, an agency with an historic role and clear jurisdiction in small business assistance, information regarding programming was scarce, and direct help non-existent. In fact, when asked to testify on these matters, SBA managers initially said they would have virtually nothing to talk about.

* At the Office of National Drug Control Policy (ONDCP), chief coordinators of the drug war, we asked a number of questions regarding business assistance programming. They indicated little interest in business programming, or in using the small business environment as an opportunity to prevent drug abuse through targeted education, or as a venue to identify and treat substance abusers. But they said they'd look into and get back to us. That was some weeks ago--we're still waiting.

* Subcommittee also has asked for an ONDCP witness to testify at a planned March 8 hearing. ONDCP has declined.

* At a recent drug treatment workshop for small businesses underwritten by the National Institute of Drug Abuse (NIDA), attendees were almost entirely from businesses with programs in place and service providers. No small business with problems, or without programming options, participated. Further, subcommittee staff was barred from attending the post-conference critique.

Subcommittee staff must conclude that individual small businesses must confront the same brickwall when seeking seeking similar information -- and help -- from federal drug authorities.

The response from one Pacific Northwest businessman seemed indicative of the more general problems facing small companies.

> "I am not aware of any federal help available in Portland, Oregon for firms like ours," said John E. Goche, president of Rapid Bind, Inc., a document folding business. In a statement to the subcommittee, Goche described his company's employee substance abuse problems as "severe."
>
> "Private help is available," Goche said. "But in most cases it is just too expensive for small firms unless it is through a group of firms.
>
> "The problems are large and the federal help, as I see it, is minimal."

DRUG TESTING TO COMBAT EMPLOYEE SUBSTANCE ABUSE: SPECIAL PROBLEMS FOR SMALL BUSINESS

The NDS places much emphasis on drug testing as a means of both identification and limiting substance abuse problems in the workplace.

However, drug testing can be unreliable, expensive and raise serious legal questions. Generally, only the largest businesses can afford to test. A survey by the Bureau of Labor Statistics (BLS) found that 43 percent of the nations largest businesses--1000 employees or more -- had implemented drug testing programs. Large companies that do test often note significant drops in the number of positive tests among their applicant pool. Such results suggest that pre-employment screening is useful. More importantly, along with testing, 76 percent of large businesses also provide employees with treatment opportunities in the form of EAPs.

The cost of testing can be prohibitive for smaller businesses, as can the cost of providing treatment programming. Only 2.2 percent of the nation's smallest businesses -- 50 employees or less -- now test. It is clear, that small businesses are not able to rely on testing to identify and limit substance abuse problems on the shop-floor.

AMERICAN SMALL BUSINESS: THE NUMBER ONE VICTIM OF EMPLOYEE SUBSTANCE ABUSE

Nowhere is the toll of workplace substance abuse more keenly felt than in the nation's small businesses. These employers, more often than not, do not have the tools, resources or sufficient expertise necessary to diagnose, confront and provide adequate treatment options for employees with substance abuse problems. Significantly, the cost of failing to deal with substance abuse is staggering.

According to the Census, there are over 6 million small businesses in the United States. Over 31 million workers (over 50 percent of the workforce by some estimates) now work in businesses employing 50 or fewer persons. These worksites range from small manufacturing facilities, to the corner convenience store, from specialized research laboratories to the local auto repair shop.

By any definition, the small business workplace is a key contact point for reaching working Americans with chemical dependency problems. However, the workplace is currently the weak-link in federal demand reduction efforts, and little new headway can be expected toward more comprehensive programming.

* Only 2.2 percent of small businesses have active programs specifically targeted at drug abuse, and only 8.8 percent offer Employee Assistance Programming to employees with either alcohol or drug problems.

The difficulties small businesses face when constructing adequate and effective demand reduction programming undermines the progress that is being made in reducing demand. Sadly, and as a result, the nation is losing a critical opportunity to increase worker productivity, as well as to improve and save lives.

This point was specifically recognized by the 1988 White House Conference for a Drug Free America convened to form recommendations to combat workplace drug abuse. The conference made two specific recommendations relating to the federal effort to curtail substance abuse in the workplace directed at both the Small Business Administration (SBA) and the Department of Commerce.

Yet, in spite of the general recognition of the detrimental impacts of substance abuse in the workplace, the Administration's commitment to demand reduction falls short in implementation.

* The White House Conference recommendations are not a priority at either the Department of Commerce or the SBA.

* Subcommittee staff was unable to locate anyone at either the Department of Commerce or the Small Business Administration able to specify the steps these agencies are taking to implement these recommendations.

* The subcommittee staff can only conclude that, with few exceptions, federal programming directed to substance abuse in the small business workplace consists primarily of cheerleading.

THE NATIONAL DRUG CONTROL STRATEGY FALLS SHORT OF PRACTICAL WORKPLACE SOLUTIONS

The National Drug Control Strategy -- the core of the Administration's policy -- is tightly focused on enforcement and interdiction efforts. Demand reduction efforts, especially those directed at the workplace, are the poor cousin of Administration programming.

Two principal regulations govern federal efforts to reduce demand in the workplace. The Drug-free Workplace Act of 1988 (DFWA) and Executive Order 12564. The DFWA applies to all federal grants and contracts worth more than $25,000, and Executive Order 12564 applies to all federal workplaces. These federal actions are often put-forth as national models for how to deal with workplace substance abuse problems.

ONDCP's Working Group Workplace Subcommittee is charged with overseeing demand reduction efforts in the workplace and the implementation of the Drug Free Workplace Act. However:

* Subcommittee staff has been unable to determine which agencies participate in the Office of National Drug Control Policy's Demand Reduction Workplace Subcommittee nor what the Workplace Subcommittee has produced;

* Despite repeated requests to ONDCP for information about the activities of the Demand Reduction Workplace Committee, staff was unable to determine what recommendations, if any, ONDCP has made to agencies like Commerce or SBA for improving their substance abuse programming; and,

* When asked why ONDCP was not urging agencies like SBA to play a more forceful role in reaching out to small businesses with solutions to workplace substance abuse problems, an ONDCP staff specialist on workplace substance abuse told us that "we don't want to dilute the effort".

Dilution of effort might be a serious and realistic concern had subcommittee staff located a federal agency allocating significant portion of its drug strategy funding to the unique problems facing small business. Unfortunately, hands-on, direct programming geared to the needs of small business is practically non-existent.

If the Administration's war on drugs in the workplace is to be fought primarily through exhortation, more voices, rather than fewer, are needed. Further, it appears that the White House Conference recommendations have been patently disregarded.

MOST DRUG ABUSERS ARE EMPLOYED

A myth exists in this country that substance abusers only exist on the fringes of society. This myth is fueled by images of nefarious drug dealers lurking near schools, spaced-out youths and skid-row alcoholics. In fact, most substance abusers are employed and to all outward appearances lead otherwise unexceptional lives.

* 70 percent of all illicit users (defined as someone who has used a substance at least once in the last 30 days) are employed -- 55 percent are employed full time while 15 percent are employed part time. This translates to over 10 million "substance abusers" in the workforce.

* As many as 8.2 percent of all full time employers report using illegal substances. 24 percent percent of all full-time employed males, ages 18-25, and 15 percent of all full-time employed males, ages 26-34, report substance abuse problems.

WORKPLACE SUBSTANCE ABUSE IS HOBBLING AMERICAN INDUSTRY

These figures represent a vast segment of working Americans who not only put themselves at risk of drug dependency, but who also are a drag on the national economy through increased workplace accidents, health care claims and absenteeism, and decreased productivity and job performance. Although firm data are lacking, several key studies report that:

* Substance abusers are three to four times more likely to have on the job accidents.

* Substance abusers are two to three times more likely to be absent.

* Substance abusers are three times more likely to file medical claims.

* Substance abusers are 25 to 33 percent less productive than non-substance abusing employees.

* Some estimates suggest that workplace drug abuse is costing the American economy as much as $60 billion dollars a year -- a figure that rises to $140 billion if alcoholism is included.

Workplace substance abuse clearly extracts a huge human cost from employers, employees and their families. Indeed, in some industries, such as transportation, the cost can be measured not only in dollars but also in lives.

* The National Transportation Safety Board reported that one driver in four in fatal heavy truck accidents had detectable blood concentrations of at least one illicit substance (excluding alcohol).

* Nearly 35 percent of accident victims treated in the Baltimore (MD) Shock and Trauma Center had levels of marijuana in their blood streams sufficient to indicate recent use.

(This memoranda does not address those industries, like transportation, that specifically fall under public safety laws and regulations.)

The workplace is the place to engage the largest segment of drug abusers in meaningful programs targeted at prevention, early intervention, treatment and continuing education.

Unfortunately, the great majority of American businesses either do not, or can not, offer employees assistance for substance abuse. The workplace has thus become a major weak-link in the national effort to reduce the demand for illegal substances.

* Of the nation's more than six million businesses, only 6.5 percent offer Employee Assistance Programming (EAP) aimed at aiding workers with substance abuse and other difficulties.

* Only 5.2 percent of the more than six million business establishments employing 50 or fewer workers offer employees EAPs.

Programming designed to assist business and industry in constructing effective, direct intervention substance abuse programming should be a priority if demand reduction efforts are to achieve any lasting success.

FEDERAL EFFORTS AIMED AT WORKPLACE SUBSTANCE ABUSE

A: The Office of National Drug Control Policy

President Bush presented his National Drug Control Strategy to Congress in 1989. The core of the initiative is the Anti-Drug Abuse Act of 1988 which requires that each National Drug Control Strategy (NDCS) include "long-range goals for reducing drug abuse in the United States." The legislation making-up the NDCS also includes the Drug-Free Workplace Act of 1988. This Act specifically recognizes the importance of the workplace as central to any nationally coordinated effort to reduce the demand for illegal substances.

Implementation of the NDCP is overseen by the Office of National Drug Control Policy (ONDCP) headed by the "Drug Czar". While the ONDCP's major function is coordination of enforcement and interdiction of illegal drugs, the Administration has also proclaimed its commitment to demand reduction efforts.

Spearheading its demand reduction efforts, the ONDCP established the Demand Reduction Working Group. The Working Group "coordinate(s) and oversee(s) implementation by national drug control program agencies of demand reduction policies, objectives, and outreach activities". The Working Group, for instance, drafted and provided model legislation directed at state efforts to promote and implement drug-free workplace goals.

Representatives of federal agencies and departments also sit on various Working Group Committees to oversee and coordinate federal efforts in the areas of treatment, education and prevention, the workplace and international demand reduction. These committees are empowered to review agency and departmental budgets to ensure that the Administration's demand reduction goals are given priority and implemented.

The Workplace Subcommittee is specifically concerned with "anti-drug programs in both the federal and non-federal workplace". In theory, the committee is charged with monitoring "the implementation of the federal Drug-Free Workplace Act of 1988", and "takes up issues arising from the development of implementing regulations for drug testing in regulated industries and monitors the implementation of federal agencies' drug-free workplace plans".

When questioned by subcommittee staff regarding the Workplace Subcommittee, ONDCP staff was unclear as to how many times the committee had met. Nor was ONDCP able to identify who participated in those meetings.

Despite repeated requests for a list indicating who and from what federal agency or department participated in the Workplace Committee, and some indication of what the committee has accomplished, ONDCP was unable to provide such information.

ONDCP stated that the Demand Reduction Working Group had examined agency and department budgets to ensure implementation of the Drug-Free Workplace Act and other demand reduction efforts. However, ONDCP could not tell subcommittee staff how or if any budget or program had been changed as a result of ONDCP oversight and "coordination".

ONDCP was also unable to explain why, for example, the Small Business Administration was not more active in workplace demand reduction efforts in accordance with the recommendation of the White House Conference on Drug Abuse. However, ONDCP did relate that bringing the Small Business Administration more actively into demand reduction efforts would, in effect, "dilute" those efforts.

As a result of its examination of ONDCP's workplace demand reduction efforts, subcommittee staff concludes that these efforts are pro-forma and lacking in vision and coherent, achievable goals.

> For example, the Drug-Free Workplace Act of 1988, requires all federal contractors and all grantees of over $25,000 to self-certify that their workplace is drug free and in compliance with the strictures of the Act.
>
> The act appears to be practically unenforceable and ONDCP could provide no instance (or any kind of data) concerning its effectiveness.

Small businesses in particular may be confused as to the act's requirements. Though the law does not require drug testing, for example, the materials produced by ONDC and other agencies explaining the act invariably address the topic prominently.

Through its prominence, testing thus emerges as a "solution" for substance abuse problems in the workplace. However, testing may mainly be used by employers as a device to prevent substance abusers from gaining employment. Even though employers who test are also required to provide treatment opportunities, testing of applicants does little to identify an already employed substance abuser nor does it channel troubled employees into credible treatment programming. Further, a serious and consistent testing program remains beyond the means of most small businesses.

The net result of this policy is that employers that can test or otherwise spot substance abusers will do so and deal with the problem through elimination of the applicant. Substance abusers are pushed ever further down the employment ladder until they fall off.

In the absence of programming, small employers may increasingly be confronted with a pool of potential employees who, because of substance abuse difficulties, have been eliminated from other jobs. In short, small business may be in danger of bearing an increasingly disproportionate share of the economic cost of workers with substance abuse problems.

Certainly, a more complete emphasis on dealing with substance abuse in the workplace is required, making it practical for small business employers in particular to afford employees treatment options. This is currently not being done. Implementing a solution should not come at the expense of eduction or community programming. These demand reduction efforts go hand in hand with programming aimed at the workplace. However, as much emphasis needs to be placed on demand reduction in the workplace as any other part of society -- i.e. the schools or neighborhood.

This failure to foster, support and provide substance abuse treatment programming and alternatives for the mass of employees in small business further misses an opportunity to keep substance abusers tied to the community as contributing members as opposed to dependents.

Substance abuse programming targeted at the small business workplace should be a federal concern because currently only the federal government has sufficient resources to explore and promote successful intervention and treatment models. This is not to suggest that state, local or independent commercial efforts should in any way be discouraged. Rather, federal agencies should help develop better models for businesses, and they should be active marketers of those models.

Unfortunately, we have not seen positive outreach programs targeting small business and its needs emerging from ONDCP. The Strategy does appear to recognize the importance of the workplace and small business as set forth in the White House Conference Report. However, ONDCP has not put forward an active, coordinated program or made significant progress in adequately involving all appropriate federal agencies.

B: The Small Business Administration and the Commerce Department

The 1988 White House Conference on Drugs in the Workplace specifically recommended that the Small Business Administration (SBA) take a more prominent role in fighting substance abuse in the workplace.

> "The Small Business Administration, with the support of other appropriate Federal agencies and private organizations, must help small businesses adopt and implement drug free workplace policies".

Now, three years after this recommendation, subcommittee staff was unable to find any concrete steps that the SBA has taken to meet these recommendations. Subcommittee staff concludes that this was a grave failure in what was intended as a coordinated federal effort to battle substance abuse in the workplace.

The SBA is charged with studying and promoting the interests of the nation's small businesses. However, when asked about how small businesses are complying with drug-free workplace regulations, Don Craft of the SBA office of Advocacy responded that "SBA has no real studies on the impact of the solutions to the problems of drugs in the workplace, we get most of our information from OSHA or other agencies." Apparently, SBA has no independent knowledge about substance abuse problems facing small businesses.

Nor does the SBA have a program for assisting small businesses develop or engage in substance abuse treatment. There is no out-reach programming from SBA aimed at small businesses with substance abuse problems. There is no emphasis at SBA sponsored conferences or forums on substance abuse problems and how they may detrimentally effect the workplace.

In addition to the White House Conference recommendations, the 1991 National Drug Control Strategy appears to recognize that many small and medium-sized businesses have not adopted anti-drug programs and will require significant assistance to do so. Despite this acknowledgement, there does not appear to be any attempt on the part of the SBA to come forward as an active soldier in the war on drugs, or on the part of the ONDCP to recruit a governmental organization whose responsibility it is to act as a direct resource to the nation's small businesses.

In short, the SBA has paid little, if any, attention to a problem that can adversely effect the nearly 6 million small businesses in the country.

The White House Conference Report also specifically recommended that the Commerce Department play an active role in efforts to reduce substance abuse in the workplace.

> "The Secretary of Commerce should direct an effort by business and trade associations to work together and with the community to promote a drug free workplace."

Subcommittee staff contacts with the Commerce Department failed to indentify programs or initiatives currently being pursued by the agency. This is unfortunate as the department could bring significant insights into discussions about the appropriateness and effectiveness of federal programming. However, as was the case with the SBA, there does not appear to be any effort on the part of the ONDCP to motivate the agency to become more active in the battle against workplace substance abuse.

C: Department of Labor

The Drug Abuse Act of 1986 directed the Secretary of Labor to conduct research into the anti-drug abuse efforts of employers. In response, the Bureau of Labor Statistics (BLS) undertook a survey of employers in an effort to estimate the number of private business establishments with (a) drug testing programs or (b) Employee Assistance Programs (EAPs). The BLS surveyed 7,500 establishments (defined as an economic unit a single location producing goods or services) specifically looking at numbers of employees, the type of industry and geographic region.

The survey showed that 43 percent of the largest business establishments (1,000 or more employees) employed some form of drug testing as opposed to 2 percent of the smallest business establishments (50 employees or fewer). At the same time, 76 percent of the largest establishments provided EAPs as opposed to 9 percent for smaller businesses. However, because over 90 percent of the nation's business establishments are considered "small," the number of establishments actually engaging in testing and/or providing EAPs, is actually smaller -- e.g. only 3 percent of all establishments used drug testing and only 7 percent employed EAPs.

Further, according to the survey, 83 percent of the largest establishments (5,000 or more employees) had written substance abuse policies while only 6 percent of the smallest (10 employees or less) had written policies.

The BLS survey shows that private industry efforts to reduce and eliminate substance abuse problems in the workplace fall into two major categories:

(1) Identification -- through the use of drug testing, businesses try to identify users among employees or to screen users out of the employment application process (although employee testing was less common).

(2) Treatment -- upon identification of a substance abuser, businesses try to provide troubled employees with help in overcoming a drug problem and thereby reduce the problem and its subsidiary effects in the workplace.

In both instances, small businesses are severely under represented. Yet, small business constitutes the majority of the nation's employers and make up nearly 50 percent of the total workforce while accounting for half of the gross national product (as cited by the White House Conference Report, June 1988).

In addition to the BLS survey, DOL conducted a series of studies which collectively were used to assess the dimension of the workplace problems and to suggest solutions.

The limited data available seems to substantiate the conventional wisdom that the cost of drug abuse in the workplace is considerable. Estimates of this cost range from $60 billion on up to $140 billion.

Small businesses and large businesses perceive and handle substance abuse problems differently. There appear to be significant impediments to the establishment of drug testing programs and EAPs for small businesses. The impediments have to be fully understood to be overcome. EAP consortia put together by small businesses in a region or by industries seem to have had some success. However, it is important to recognize that currently, the consortia model is employed by, and available to, only limited numbers of small businesses with identified substance abuse problems. The challenge ahead would seem to be in developing and supporting intervention and treatment models that are accessible to increasingly larger numbers of small businesses.

One of the consequences of drug testing programs, which for the most part are conducted by larger enterprises, may be to simply pass employees with substance abuse problems on to small businesses which are ill-equipped to either screen job applicants or provide treatment. The DOL data appear to substantiate the need for outreach and active guidance and assistance for programs directed specifically to the needs of small businesses.

In FY-1989 DOL awarded 23 grants totalling $1.5 million to non-profit employers and employer representatives to initiate or expand workplace substance abuse treatment programs. The grants require a matching share and may be made for up to three years. Though the programs did not target small business specifically, it appears to represent the only active, hands-on step in the federal government to join forces with the private sector to combat a common enemy. The DOL should be commended for this contribution. Although it is premature to expect results of this effort, the program may well serve as a model for the development of a substance abuse programming initiative specifically targeted to small businesses.

In addition DOL has produced a number of publications to provide general guidance and advice to employers about establishing workplace programs. DOL appears to be an active participant in the ONDCP Subcommittees on Demand Reduction Working Group. Unfortunately it has been difficult to determine what the recommendations of the workplace subcommittee are vis-a-vis efforts to solve small business problems.

DOL has also worked closely with NIDA and the states (through NASADAD) in sponsoring regional conferences directed to the community (including small businesses).

D. The National Institute on Drug Abuse

NIDA through its programs has actively engaged in programming and research into the problem of workplace substance abuse. NIDA specifically supports research on the prevalence, impact and treatment of drug abuse through a variety of research grant programs. The programs are managed under the Workplace Policy Research Branch of the Division of Applied Research. It is that division which established standards for drug testing and for certification of approved laboratories.

The figures for the prevalence of drug use in the workplace -- e.g. 70 percent of those reporting illicit drug use are employed -- have provided by the NIDA National Household Survey. It is also NIDA which has provided much of the information about the relationship of drug use to performance and productivity along with cautions regarding how results should be interpreted.

NIDA's Budget devoted to workplace issues totals approximately $6.9 million and is less than 2 percent of the Institute budget. None of this programming is specifically targeted to small business.

In addition to NIDA's research efforts, the institute operates a drug-free workplace helpline. The helpline is a toll-free service which provides technical assistance to business, industry and unions on the development and implementation of drug-free workplace programs. When the helpline was initiated in 1987 it averaged 300 calls per month. It now averages 1,000-plus calls per month. Much of the increase can be attributed to the passage of the Drug Free Workplace Act of 1988.

> Clearly there is an interest on the part of the business community in seeking assistance. About 65 percent of these calls were from small businesses. NIDA does not have information on how many of these calls culminated in ascertainable progress, or how many dropped out. Follow-up studies are clearly needed.

NIDA has also joined with DOL in putting on regional conferences designed to provide guidance on establishing drug-free workplaces. In this endeavor, they are supported by NASADAD (National Association of State Alcohol and Drug Abuse Directors) which has acted as a resource for states.

NIDA has also been active on the ONDCP Drug Reduction Working Group, Workplace Subcommittee. Again, the impact and usefulness of the effort is, at best, unclear. Like DOL, NIDA deserves positive recognition for its efforts. However, and also like DOL, NIDA should be encouraged to continue seeking ways to solve the specific problems of the small business workplace.

In summary, DOL and NIDA have provided much of the basic data about the substance abuse problem in the workplace that is currently available. Both agencies have provided guidance though pamphlets, telephone help-lines and the support of conferences. Finally, both actively cooperate with the ONDCP.

STAFF CONCLUSIONS

1. The small business workplace is a logical venue to fight the war on drugs.
2. Federal anti-drug efforts involving small businesses are poorly targeted and coordinated, and in some respects non-existent.
3. Small businesses are interested in substance abuse treatment programming. But such programming is too costly or, inappropriate for the business, or it is not readily available.
4. Small business productivity and competitiveness will be eroded unless effective substance abuse programs are created, with a clearer and more aggressive role by the federal government.

5. Programs must be developed to:

   a). Improve research methodologies for better analysis and assessment;

   b). Improve outreach to small business and allow businesses participate in the development of model programs;

   c). Broaden the federal effort -- e.g. the SBA and the Commerce Department should take a more active role -- particularly for outreach and early referral to other agencies;

   d). ONDCP's role as a lead coordinator should be clarified and better directed;

   e). The small business workplace must be an active participant in the implementation of community prevention and education programs;

   f). Community and state resources used to support testing and EAP services should be better coordinated with the federal effort in these areas;

   g). Alcohol, which is specifically excluded from the ONDCP demand reduction planning process, should be specifically addressed in all efforts to provide solutions for workplace substance abuse problems; and,

   h). Specific resources should be allocated to undertake these suggested programs.

The subcommittee hearing on federal programming directed to address substance abuse problems in small businesses workplaces will convene on Friday, March 8, 1991, at 10:00 A.M. Witnesses from federal agencies will include representatives of the Small Business Administration, the National Institute on Drug Abuse, the Department of Labor. Other witnesses will include: Jeffrey Kushner, Director of the State of Oregon Alcohol and Drug Abuse Programs; Marguerite Saunders, Director of the State of New York's Division of Alcoholism and Alcohol Abuse; Lt. Governor Melvin A. Steinberg, Chairman of the Governor's Drug and Alcohol Abuse Commission, State of Maryland. Small business owners and substance abuse treatment professionals will also be represented.

ANSWER TO CHAIRMAN'S REQUEST FOR ADDITIONAL INFORMATION

Dr. Joseph Autry, Director, Division of Applied Research, National Institute on Drug Abuse

NIDA awarded a contract to the National Association of State Alcohol and Drug Abuse Directors (NASADAD) in fiscal year 1990, to provide funding and technical direction to ten States interested in providing workshops for small and medium size businesses on how to develop a drug-free workplace program. The workshops were originally designed to last two days, and were modeled after similar two-day workshops that NIDA conducted for Federal agencies on the topic of drug-free workplaces.

It became apparent half-way through the contract that attracting small and medium size business owners and senior staff was very difficult. After discussion with the States that had already conducted their workshops, the project was revised to allow States the option of offering a one-day workshop. Although better attendance was achieved, persons involved in the project, from NIDA, NASADAD, the States, and broad-based business advisory groups, felt that the workshop format could be improved further by offering half-day programs, programs that are issue specific or industry specific (as opposed to comprehensive and for all types of businesses), and that were targeted at a small geographic area, such as a county, city, or municipality. The last workshop in the series will be presented at two sites in Missouri, and will offer attendees the opportunity to pay for a morning only, morning and lunch, or an all day program. The other recommendations could not be taken advantage of under this procurement.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MAR 7 1991

Honorable Ron Wyden
Chairman
United States House of Representatives
Committee on Small Business
Subcommittee on Regulation,
Business Opportunities, and Energy
B-363 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your invitation to testify before your Small Business Subcommittee on such a critical issue. Drugs in the workplace indeed pose a serious threat to the future viability of small businesses across America.

While I will be unable to testify at your upcomimg hearing, the U.S. Small Business Administration (SBA) would be pleased to have its Acting Chief Counsel for Advocacy, Mark S. Hayward, appear before your subcommittee on March 8th.

Your subcommittee is to be commended for its investigation into the ability of small businesses to implement anti-drug programs. Clearly, there is a disparity between the ability of large and small businesses to offer anti-drug abuse programs. A 1988 Bureau of Labor Statistics survey revealed that while 76 percent of the nation's largest businesses provide employee assistance programs to its workers, only 9 percent of small businesses offer similar programs.

The incidence of anti-drug abuse programs among the nation's 20 million small business owners must be increased and I am hopeful that your hearings will explore viable means to achieve this goal.

Sincerely,

Susan

Susan Engeleiter
Administrator

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102d Congress
United States House of Representatives
Committee on Small Business
Subcommittee on Regulation,
Business Opportunities, and Energy
B-363 Rayburn House Office Building
Washington, DC 20515

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March 18, 1991

The Honorable Susan Engeleiter
Administrator
United States Small Business Administration
Washington, D.C. 20416

Dear Ms. Engeleiter:

Thank you for your letter of March 7, 1991, declining the subcommittee's invitation to testify on the topic of substance abuse in the small business workplace. We are writing out of concern over the content and nature of the testimony delivered to the subcommittee by Mr. Mark Hayward, the Acting Chief Counsel for Advocacy.

The subcommittee wishes to express its profound disappointment with the SBA's testimony. The inadequacies of the testimony were not in any way Mr. Hayward's fault, nor does the fault lie with the staff assigned to prepare Mr. Hayward's testimony. Rather we fear the fault lies in a deeper, more troubling failure within the SBA.

One of the stated aims of the National Drug Strategy is to involve all arms of the government in the war against substance abuse. However, so far as could be gathered from testimony before the subcommittee, the SBA is, and has been, entirely absent from the battlefield. This, in spite of the specific recommendation made by the 1988 White House Conference on Drugs in the Workplace that the SBA actively join the fray:

> **"The Small Business Administration, with the support of other appropriate Federal agencies and private organizations, must help small business adopt and implement drug free workplace policies."**

Nearly three years have passed since that conference. The best that the SBA could report to the subcommittee on March 8th is that drugs are indeed a problem in the small business workplace and that the SBA is, of course, concerned by this fact.

Hon. Susan Engeleiter
March 21, 1991
Page Two.

Most discouraging was the testimony from other witnesses--persons actively engaged in constructing solutions for small businesses with workplace substance abuse problems. They stated that the SBA had called them in order to learn something about the issue. Three years into the official drug war, the SBA should not have to contact potential clients to determine the extent of the problem.

The only thing that the subcommittee can read into such admissions is that no one at the SBA has taken responsibility for this issue or has any idea about the size or extent of the problem. The SBA has made no effort to determine what its role should be in finding solutions. The subcommittee believes that this represents an obvious failure to identify and address a critical issue facing our nation's small businesses.

Big businesses, able to use pre-employment screening, can minimize the effects of workplace substance abuse. As a result, substance abusing workers will shy away from employment in such enterprises and instead turn to seek employment with small businesses. Workplace substance abuse will increasingly become a problem peculiar to small businesses, and those businesses will look to the SBA for assistance and guidance. The subcommittee believes that the SBA must be prepared to answer the call.

We urge the SBA to reject complacency. The agency must become a resource both to study and understand the size and nature of the problem. Also, the agency must take active steps to aid small businesses to develop and provide employees with a variety of treatment options.

Therefore, we request within 30 calendar days a report form your office on how the SBA plans to implement the recommendations of the White House Conference on Drug Abuse in the Workplace. This report will be included in the written record of the subcommittee's March 8, 1991, hearing on substance abuses in the small business workplace. Should you have any questions, please don't hesitate to contact Graydon Forrer or Steve Jenning of the Subcommittee staff at 225-7797.

Sincerely,

Jan Meyers

RON WYDEN
Chairman

JAN MEYERS
Ranking Minority Member

RW/gjf

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MAR 28 1991

Honorable Ron Wyden
U.S. House of Representatives
363 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Wyden:

Thank you for your letter of March 18, 1991, regarding the role of the U.S. Small Business Administration in assisting small businesses with the implementation of drug-free workplaces. Given the importance of the issues you have raised, I have forwarded your letter to SBA Administrator-designate Pat Saiki. I believe that the new SBA Administrator should have the opportunity to respond.

As emphasized in President Bush's drug control strategy, substance abuse in our nation's small businesses is a serious concern. The SBA has and, I am confident, will continue to work with both the public and private sectors to ensure that the war against drugs will be fought in small as well as large firms.

Sincerely,

Susan Engeleiter

Susan Engeleiter
Administrator

1953

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

APR 1 1 1991

Honorable Ron Wyden
Chairman, Subcommittee on Regulation,
Business Opportunity, and Energy
Committee on Small Business
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing in response to your letter of March 18, 1991 which has been forwarded to me by former Administrator Susan Engeleiter. Your attention to the serious problem of substance abuse in the small business workplace is to be commended.

The issues you have raised deserve serious and immediate attention. The SBA's Office of Advocacy, along with other SBA departments, are currently exploring how the SBA can better serve its small business constituency on this important problem. As illicit drug abuse alone afflicts as many as 5 million small business employees, I can assure you that this issue will be a top priority for me, as well as my fellow employees here at the SBA.

As the new Administrator of the Small Business Administration, I look forward to a close and productive working relationship as we examine how the federal government can better assist small businesses in dealing with this problem. I will share with you our plans at the earliest possible date.

Sincerely,

Pat

Patricia Saiki
Administrator

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Honorable Ron Wyden
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Wyden:

Enclosed is the April issue of the U.S. Small Business Administrations's monthly article series. This month's article, "Employee Assistance Programs: Overcoming Substance Abuse in the workplace" identifies solutions to the problem of small abuse in small businesses.

The article series is distributed to our field offices throughout the country for placement in local newspapers, chamber of commerce newsletters, etc. The articles are also distributed to national trade and professional organizations serving the small business community to be placed in their magazines and publications.

For the coming months, we have planned articles on how to cut legal fees and business communications skills.

We think that the article will be of interest to your constituents and hope that you use or reference them in your newsletter. To receive additional copies or if you have any questions, please contact Rebecca Erlij at: 202-205-6665.

Sincerely,

Gary A. Keel
Acting Associate Administrator
for Business Development

Enclosures

BUILDING EXCELLENCE IN ENTERPRISE

A Monthly Series of Small Business Articles Sponsored by
the U.S. Small Business Administration
Office of Business Development

DATE: **April 1991**

SUBJECT: **EMPLOYEE ASSISTANCE PROGRAMS:**
Overcoming Substance Abuse in the Workplace

Drug and alcohol abuse is a major small business problem. Seventy percent of all illegal drug users are employed either full- or part-time. This translates into over 5 million drug abusers working in small businesses.

Substance abuse affects the bottom line. It costs you, the owner-manager, money. Workers who abuse drugs and alcohol are less productive, miss more days of work, and are more likely to injure themselves or cause damage in the workplace. In addition to the real dollar costs of absenteeism, overtime pay, high insurance claims and worker's compensation, other hidden cost include: diverted management time, friction among workers, damage to equipment, personnel turnover, and damage to the company's image.

What can you do to avoid the problems of substance abuse in your workplace? You may think the solutions involve a high cost; but in fact, they will probably save you money. A three-step program, which you can begin to implement immediately, is listed below.

1. Write a Formal Substance Abuse Policy

Outline where you stand, what you expect from employees, and what you will do if your policy is violated. Your policy should explain your reasons for establishing it (e.g. workplace safety, worker health, product quality, productivity, and product liability) and it should tell employees what will happen if they violate the policy. This lets everyone know that you are committed to a drug-free workplace. Your concern and safety for the health of your employees will also help to build morale.

2. Train Supervisors and Educate Employees

Supervisors need to know how to look for signs of substance abuse and what to do once they find them. But they are not responsible for treating substance abuse problems. Their responsibilities should be limited to informing and educating employees about the company's policy, to explaining how drug and alcohol abuse affect the company's productivity and product quality and to referring employees to assistance programs.

3. Provide Employee Assistance

Most small business owners have never heard of an Employee Assistance Program (EAP) or think that they are only for big business. EAPs are usually private organizations that for a fee offer services to identify, assist and resolve poor job performance associated with employees impaired by personal concerns including: drug, health, marital, family, financial, emotional, stress or other personal concerns.

As a small business owner, you may be concerned with the cost of the services provided by EAPs, but, in fact, the cost of an EAP can be relatively low - as little as $30.00 per employee per year. It is estimated that for every dollar an employer invests in an EAP, the savings range from $5 to $16 in reduced absenteeism, improved productivity and a safer working environment. You can lower the costs of EAP services by joining a consortium of small companies or working with a trade or local business organization. In addition, some health care carriers offer EAP services as part of their benefit packages. For more information on EAPs contact the Drug Free Workplace Helpline: 1-800-843-4971.

For further information on substance abuse contact the National Institute for Drug Abuse Hotline: 1-800-662-4357. For pamphlets and resource materials on substance abuse, write or call: **The National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Md. 20852; (301) 468-2600 or 1-800-729-6686 toll-free.** For assistance from the U.S. Small Business Administration, call the Office of Advocacy at (202) 205-6532.

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The U.S Small Business Administration (SBA) Office of Business Development is pleased to sponsor this article. The SBA offers a variety of services to persons in business or wishing to start their own businesses. Veterans of Operation Desert Shield or Desert Storm may obtain information by contacting the Veterans Affairs Officer in their local SBA office or by calling (202) 205-6773.

For a list of SBA publications and videotapes on a variety of business management topics, you may request a free **Small Business Directory** from: Publications, P.O. Box 1000, Fort Worth, TX 76119, or contact your local SBA office.

For the SBA office nearest you, consult the U.S. government section in your telephone directory. For information about SBA business development programs and services call the SBA Small Business Answer Desk at 1-800-U-ASK-SBA.

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101st Congress
United States House of Representatives
Committee on Small Business
Subcommittee on Regulation,
Business Opportunities, and Energy
B-363 Rayburn House Office Building
Washington, DC 20515

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SUBCOMMITTEE STAFF DIRECTOR
202-225-7797

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MINORITY SUBCOMMITTEE PROFESSIONAL
STAFF MEMBER
202-226-6136

February 8, 1991

Governor Robert Martinez
Acting Director
Office of National Drug Control Policy
Executive Office of the President
Washington, D.C. 20500

Dear Governor Martinez:

Nearly 70% of all illegal drug users are employed full or part time. Thus, substance abuse in the workplace is likely to play a significant role in many of the problems currently facing American industry. From absenteeism and job-related injuries to declining productivity, substance abuse is eating away at the ability of American business to effectively compete in the global economy. Clearly, the workplace provides a critical opportunity to reach employees with treatment, education and prevention programming.

Through the Drug Free Workplace Act (DFWPA) and Executive Order 12564, the Federal government has provided some guidelines to employers on meeting substance abuse problems. Large employers have the resources necessary not only to address substance abuse issues, but also to provide Employee Assistance Programs (EAPs). Unfortunately, the cost of such programming is generally prohibitive for small businesses. Small business employers and small work places, in particular, face special problems in addressing substance abuse by employees.

The Small Business Subcommittee on Regulation, Business Opportunity and Energy is examining programs and policies targeted at assisting small businesses in addressing substance abuse issues. The subcommittee extends to you, or an approriate designee, an invitation to testify on the problems of substance abuse in the work place.

The subcommittee requests that your testimony address, but not be limited to, the issues raised below.

1. The National Drug Control Strategy (NDCS) identifies the workplace as meriting special attention in the war on drugs.

    a). What is the basis for this assessment by the ONDCP?

b). Please characterize the problem in terms of human and economic cost.

c). How much of this burden is borne by small businesses?

2. With respect to the workplace, please identify and describe specific problem areas that have been identified, initiatives undertaken and resources allocated/reallocated on the basis of the ONDCP's coordination effort. How have small businesses fared in this effort?

3. What has been the impact of the Drug-Free Workplace Act of 1988? Has its implementation affected small businesses differentially? The Demand Reduction Working Group of the ONDCP has been identified as having responsibility for overseeing the implementation of these regulations. Please describe the composition of the working group, its modus operandi, the frequency with which it meets and the contributions that it has made with respect to the drug strategy and substance abuse problems facing small businesses.

4. What has been the compliance record of contractors and grantees affected by the Act? How is compliance/non-compliance determined and documented by the working group or other appropriate federal agencies? How have small businesses fared in this regard? What are the consequences of failure to comply post award?

5. Please describe the Model State Drug-Free Workplace legislation developed by ONDCP. Were states and representatives of small businesses and labor involved in its preparation? What has been the response to these guidelines?

6. Drug testing plays a pivotal role in the workplace drug strategy. How has that element impacted on small business? How will constraints which may be faced by small businesses be considered by the ONDCP working group which is to be established at review proposed national drug testing legislation?

7. How does the ONDCP plan to evaluate the effectiveness of the enacted and proposed initiatives? Will the ONDCP consider criteria appropriate for small businesses?

The hearing will convene at 10:00 A.M., on Friday, March 8, in Room 2359A of the Rayburn House Office Building in Washington, D.C.

February 8, 1991
Page 3.

Because of time constraints, please limit your oral presentation from 5 to 7 minutes. Your written testimony may be as detailed as you desire and it will be included in the hearing record in its entirety. Please bring 100 copies of your testimony with you to the hearing for distribution by subcommittee staff.

Finally, please provide the subcommittee staff with a copy of your written testimony no later than the close of business on Wednesday, March 6, 1991. A copy of your testimony may be submitted by FAX to (202)225-8941. Should you have any additional questions, please don't hesitate to contact Graydon Forrer of the subcommittee staff at (202)225-7797.

I appreciate your willingness to assist the subcommittee in this matter.

Sincerely,

Ron Wyden

RON WYDEN
Chairman

RW/gjf

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

MAR 1 1991

The Honorable Ron Wyden
Chairman
Subcommittee on Regulation,
  Business Opportunities, and Energy
Committee on Small Business
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of February 8, 1991, inviting Governor Martinez to testify before your Subcommittee on March 8, 1991, on the problems of substance abuse in the work place.

As you may know, the Senate Judiciary Committee held confirmation hearings for Governor Martinez on February 26 and 27, 1991, and it is unforseeable that he will be confirmed by the date of your hearing. While we appreciate this offer to testify, we will have to decline your invitation.

Thank you for your interest in the work of our office.

Sincerely,

Joseph H. McHugh
Director
Congressional Relations

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102d Congress
United States House of Representatives
Committee on Small Business
Subcommittee on Regulation,
Business Opportunities, and Energy
B-363 Rayburn House Office Building
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JENIFER LOON
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STAFF MEMBER
202-225-[illegible]

April 2, 1991

Governor Robert Martinez
Director
Office of National Drug Control Policy
Executive Office of the President
Washington, D.C. 20500

Dear Governor Martinez:

Congratulations on your confirmation as Director of the Office of National Drug Control Policy (ONDCP).

As you may be aware, this subcommittee recently held hearings on the impact of substance abuse on the small business workplace and on the lack of credible and coordinated federal programming designed to assist small business in addressing this issue. Unfortunately, the ONDCP declined our invitation to participate in this discussion and to assist our investigation of how the federal government might better coordinate its demand reduction efforts to better meet the needs of the nation's small businesses.

In the subcommittee's invitation to testify, we requested that ONDCP provide information on ONDCP's Demand Reduction Subcommittee. Specifically, staff inquired into the composition, meeting schedule, minutes, and purposes of the demand reduction subcommittee. The subcommittee hopes that you will use the occasion of your confirmation to supply answers to the questions posed in the attached subcommittee letter of invitation to its March 8, 1991, hearing.

One area of particular concern to the subcommittee is the ONDCP's role in overseeing the implementation of the 1988 Drug Free Workplace Act through the Demand Reduction Working Group. ONDCP oversight was to determine whether or not the need exists for additional measures to enhance compliance with this Act.

However, one of the agencies testifying at the March 8 hearing told the subcommittee that the value of the Act did not lie in the ability of the federal government to monitor or enforce the Act, but in the capacity of the act to stimulate private sector interest in establishing drug-free workplaces. Is it ONDCP's position that oversight and enforcement of the Drug Free Workplace Act is not necessary or is ONDCP currently performing an oversight and review of enforcement as called for in the National Drug Strategy?

An additional point arising from the March 8 hearing was the failure of the ONDCP to specifically include the SBA in the discussions of the workplace subcommittee. This is an unfortunate oversight. Clearly, the SBA is a substantial source of data on the nation's small businesses and the nature, needs and composition of those businesses' workplace and workforce. Surely, the SBA could provide the ONDCP's workplace subcommittee with a variety of valuable information regarding how to best implement successful demand reduction efforts.

Therefore, the subcommittee requests that the ONDCP include the SBA on the workplace subcommittee.

Further, the subcommittee requests that ONDCP's workplace subcommittee come forward with specific recommendations for the better coordination of federal workplace efforts to more effectively reach and assist the small business community. These recommendations should be submitted to the subcommittee within 30 calendar days for inclusion in the record of the March 8, 1991 hearing.

We appreciate your willingness to assist the subcommittee in this matter. Should you have any questions, please contact Graydon Forrer or Steve Jenning of the subcommittee staff at 225-7797.

Sincerely,

Ron Wyden
RON WYDEN
Chairman

Jan Meyers
JAN MEYERS
Ranking Minority Member

enclosure
RW/gjf

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

MAY 2[illegible] 1991

The Honorable Ron Wyden
Chairman
Subcommittee on Regulation, Business
  Opportunities and Energy
Committee on Small Business
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your recent letter requesting information concerning the Office of National Drug Control Policy's (ONDCP) Demand Reduction Working Group Workplace Subcommittee.

The Workplace Subcommittee is a component of the Demand Reduction Working Group, established under the first National Drug Control Strategy to facilitate coordination of drug control policy. The Subcommittee functions to coordinate Federal agencies' positions and policies on workplace substance abuse issues. It meets approximately quarterly, and consists of representatives from the Office of Management and Budget, the Departments of Health and Human Services, Labor, Transportation, Justice, Defense, Energy, and Interior, the Office of Personnel Management, and the White House Office of National Service.

I, too, am concerned about the impact of drug abuse in small business and have asked the Small Business Administration to become a participating member of the Subcommittee. At the most recent meeting, we discussed the Federal plan of action to help small businesses establish drug-free workplace policies and programs.

The Subcommittee continues to examine issues related to the implementation of the Drug-Free Workplace Act of 1988. Enforcement of this Act, as for all other special contract requirements, is the responsibility of the contracts offices and Inspectors General of each Federal agency. These officials monitor, respectively, that each contractor attests to having established a drug-free workplace plan, and audit a sample of contractors to establish whether they complied with requirements of the Act. Further study is being given to the effectiveness of the Act and whether additional statutory or regulatory clarification is necessary.

As the President's designee, we have taken the lead to ensure complete compliance with Executive Order 12564, requiring Federal drug-free workplace programs, and we intend to see to it that each agency has a drug-free workplace plan in place.

Drug-free workplace issues are a top priority of this Administration. In November 1990, ONDCP published Building A Drug-Free Workforce. This package of model legislation consists of four separate bills designed to help public and private employers create incentives for employees to remain drug-free or get off drugs, and sanctions for those who will not. We have also published the State Drug Control Status Report. This report provides an overall picture of anti-drug laws and policies implemented by each State. I have enclosed copies of both reports for your information.

I am hopeful this responds to your concerns. An identical letter has been sent to Representative Jan Meyers.

Sincerely,

Bob Martinez
BOB MARTINEZ
Director

Enclosures

U.S. DEPARTMENT OF LABOR

FY 1992 WORKPLACE SUBSTANCE ABUSE BUDGET

$1,000,000 to continue OMB-mandated research on the effectiveness of workplace anti-drug programs

$500,000 to continue public awareness campaign to promote the establishment of comprehensive workplace substance abuse programs

$696,000 for development and printing of materials to assist small business employers in addressing the problem of workplace substance abuse

$2,196,000 requested

NATIONAL INSTITUTE ON DRUG ABUSE

WORKPLACE FOCUSED EXPENDITURES

FISCAL YEAR 1990

In 1990 NIDA spent a little less than 2% of its total expenditures on workplace focused activities:

Total Workplace Focused Expenditures	$6.9 million
Total NIDA Expenditures	$379.7 million
Workplace Expenditures as a Percent of Total Expenditures	1.83%

NIDA'S DRUG-FREE WORKPLACE HELPLINE DATA

NIDA's Drug-Free Workplace Helpline provides individualized technical assistance to business, industry, and unions on the development and implementation of comprehensive drug-free workplace programs. This uniquely tailored service is the only known toll-free service offered of its kind in the country. It is the only service available on a nationwide basis for small businesses.

The average number of calls has increased from 300 per month in its first year of operation to currently over 1000 calls a month. Over 65% of callers tell us they are from businesses with under 500 employees. We estimate that at least 20% of the calls are from businesses seeking to comply with the Drug-Free Workplace Act of 1988.

The following figures give the number of calls per calendar year from small businesses and the top three categories of information requested:

1987 2631 calls	1988 2977 calls	1989 5905 calls	1990 6064 calls
1. Testing	1. Policy	1. Policy	1. Policy
2. EAPs	2. Testing	2. Testing	2. Testing
3. Sup.Tng.	3. EAPs	3. Emp. Ed.	3. Emp. Ed.

In 1988 several Federal drug-free workplace initiatives were launched: Mandatory Guidelines for Federal Workplace Drug Testing Programs were published and in late 1988 both DOD and DOT issued regulations impacting private sector employers and finally, there was the Drug-Free Workplace Act of 1988. The following year the number of employers calling the Helpline doubled. It is noteworthy that most callers, from 1988 on, wanted to know about developing a policy - a primary requisite in all Federal initiatives - and that Employee Education became the third most frequently sought information - another primary requisite of Federal initiatives. An employee awareness program, together with a written policy, are the key requirements for complying with the Drug-Free Workplace Act. A very plausible explanation for the increase in calls coming into the Helpline - especially the increase in those asking for information about policy and employee education - is that they were largely stimulated by the Drug-Free Workplace Act and other Federal initiatives.

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DIVISION OF ALCOHOLISM AND ALCOHOL ABUSE
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ALBANY, NEW YORK 12210
(518) 474-3377

Mario M. Cuomo
Governor

Marguerite T. Saunders
Director

March 21, 1991

The Honorable Ron Wyden
Chairman
Subcommittee on Regulation, Business Opportunities
and Energy
2452 Rayburn Building
Washington, D.C. 20515

Dear Congressman Wyden:

I want to thank you and the members of the Subcommittee on Regulation, Business Opportunities and Energy for inviting me to testify at the March 8, 1991 hearing on alcohol and other drugs in the workplace. The Subcommittee's interest in both this topic and the federal Drug Free Workplace Program's response to small business is critical and timely. I congratulate you on your efforts to listen to those in business and government who are attempting to deal constructively with these crucial, economically draining problems.

I understand that you have had a long-standing concern for the needs of the elderly. The enclosed material on the significant problems faced by the growing number of elderly people who turn to alcohol in their later years, may be of interest to you.

Best wishes in your deliberations on the Drug Free Workplace as it relates to small business. If I can be of further assistance in this area or the subject of alcohol abuse and the elderly, please feel free to contact me.

Sincerely,

Marguerite Saunders

Marguerite T. Saunders

An Equal Opportunity / Affirmative Action Employer

Alcohol Problems and the Elderly

New York State Division of Alcoholism and Alcohol Abuse

Prevalence figures of the Division of Alcoholism and Alcohol Abuse (DAAA) for New Yorkers over the age of 60, indicate that an estimated 166,000 seniors suffer from the disease of alcoholism. DAAA's projected interim methodology shows that the number of senior alcoholics will grow at a steady rate of 6.6%.

Major concerns for alcoholic seniors are compounded by many of the issues: isolation, deteriorating health status, insufficient access to regular health care, mis-prescribing of drugs, non-compliance with directions for prescription drug use, and the lack of crucial information and training available to medical professionals, pharmacists, seniors themselves, and their families and friends.

While well-documented obstacles to the detection of alcoholism and alcohol abuse exist for all age groups, the realities of day-to-day life for seniors place this population at a markedly higher risk of non-detection and its consequent effects. Further confusion and higher risks arise when a non-alcoholic senior slips -- often unwittingly -- into the category of alcohol abuse, either because of alcohol consumption coupled with necessary prescription drugs or changes in tolerance due to the natural aging process.

This frightening potential for suffering is heightened by society's tendency to confuse the effects of alcohol (e.g., accidental injuries, failing memory, increased medical problems, decreased appetite, isolation, etc.) with behavior attributable to the normal aging process. Similarly, the effects of alcohol are often perceived as the effects of prescription drug abuse.

Without a solid professional and public appreciation of the effects of alcohol on seniors the spiraling consequences of alcoholism and alcohol abuse are suffered not only by the drinker, but by families, friends, caregivers, and society as well.

Concern for the welfare of seniors is being expressed in several of the Division's current endeavors:

- Included as a priority in the 1991 Update to DAAA's Five Year Comprehensive Plan for Alcoholism Services in New York State is the issue of planning and programming alcoholism services to the elderly.

- The Division's Research Institute on Alcoholism in Buffalo is currently conducting research to examine alcohol consumption among the elderly. This research is being carried out in collaboration with the NYS Office of Aging and is funded by the federal Administration on Aging.

- Findings based on DAAA's innovative Hospital Intervention Service (HIS) model have helped to identify the degree to which alcohol negatively impacts on seniors. "The Second Formative HIS Report" indicates that 12.33% of hospital admissions between the ages of 55-64 tested positive in a screen showing a high probability of having an alcohol problem; for hospital admissions over the age of 65, HIS screened positively for approximately 5%. Without the HIS screen in place, it would have been unlikely that any of these admissions would have been identified as alcohol-related. The positive HIS screens were followed by client interventions. The results were that 52.34% of the 55-64 age group, and 44.18% of the 65+ age group who received intervention were referred to alcoholism treatment.

- The Division is exploring the possibilities for enhancing alcoholism services to the elderly using models developed by various visiting nurse associations throughout the State. As evidenced by the testimony presented before your committee, visiting nurses represent a valuable resource in accessing otherwise isolated and potentially confused elderly clients who may be abusing alcohol.

Three areas of specific need for enhanced services for the elderly have been identified in the Division's 1990-1991 Plan Update:

1. expand and establish new outreach and assessment efforts aimed at seniors,

2. establish a program track tailored for seniors in the existing outpatient alcoholism program model, and

3. establish an outpatient alcoholism program through a new service provider experienced in servicing this targeted population.

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EAP
· ASSOCIATION ·

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EMPLOYEE ASSISTANCE PROFESSIONALS ASSOCIATION, INC.

March 27, 1991

Ron Wyden
Chairman
Regulation, Business Opportunities and
 Energy Subcommittee
B363 Rayburn House Office Building
Washington, DC 20515

Dear Representative Wyden,

I am writing on behalf of the Employee Assistance Professionals Association (EAPA) to provide a copy of our 1991 Federal Legislative Agenda. EAPA represents employee assistance practitioners from labor, management and independent service providers throughout North America. EAPA has seventy-nine (79) chapters throughout the country and over 6,800 members, making it the largest EAP association.

The central mission of an employee assistance program is to assist labor and management in the identification and resolution of productivity problems associated with employees impaired by personal concerns. We assist individuals who have alcohol, drug, health, marital, family, financial, emotional, stress and other personal concerns that may adversely affect employee job performance.

EAPs play a very important role in our Nation's fight against alcohol and drug dependence: we help employed individuals with drug and alcohol problems get treatment and return to their full level of productivity. We operate in a unique way by bringing together representatives from both labor and management to establish programs that result in safer, healthier workplaces.

We urge the federal government to plan an active role in promoting the development of effective EAPs within federal agencies and in the public and private sector. Accordingly, our legislative agenda requests that Congress:

- Incorporate the EAPA definition of "employee assistance program in any relevant legislation;

President, **Daniel Lanier, Jr., DSW, CEAP**; General Motors Corp., UAW-GM Human Resources Center—Royal Oak, Michigan
Vice President (Operations), **Donald W. Magruder, CEAP**, Anheuser-Busch Companies, Inc.—St. Louis, Missouri
Vice President (Administration), **Debra L. Reynolds, MS, CEAP**, Continental Airlines—Houston, Texas
Secretary, **Kevin Michael Parker, CEAP**, State of Maine—Hallowell, Maine
Treasurer, **Pat Patrick, CEAP**, Union Pacific Railroad Co.—Houston, Texas
Immediate Past President, **Thomas J. Pasco, Ph.D., CEAP**, UAW-GM Human Resources Center—Royal Oak, Michigan
Staff: Executive Director, **Thomas J. Delaney, Jr., CEAP**/Associate Director, **Judith O. Evans**

- Support the development of EAP consortia to expand services to small business;
- Protect the confidentiality of EAP client information;
- Include coverage of treatment for alcohol, drug and mental health problems in federal health benefits legislation;
- Support funding for research on drug and alcohol abuse in the workplace;
- Press for Congressional oversight of the operations of EAPs in the federal agencies;
- Ensure that the appropriate role and definition of EAPs is included in any legislation concerning drug testing.

We appreciate your support in our mutual efforts to combat alcohol and drug dependence and look forward to working with you on these most important issues. If you have any questions about the agenda, please contact Thomas J. Delaney, Executive Director of EAPA at 703/522-6272.

Sincerely,

Daniel Lanier Jr.

Daniel Lanier, Jr., DSW, CEAP
EAPA President

EAPA FEDERAL LEGISLATIVE AGENDA

1. Incorporate the Employee Assistance Professionals Associations definition of an "employee assistance program" in federal legislation and regulations

A consistent definition of "employee assistance program" must be incorporated into all relevant federal legislation and regulations. While the Congress and federal regulatory agencies have become familiar with the EAP concept and have required establishment of EAP's in some contexts, there has been great confusion and misunderstanding about the core services provided by EAP's. The Employee Assistance Professionals Association has developed a legal definition of EAP (attachment A) that should be the model for all programs that are established pursuant to federal regulation or legislation.

2. Support the development of employee assistance program consortia to expand services to small businesses

Every employee who has an alcohol or drug dependence problem, health or personal problem that affects work performance should be able to seek help from an employee assistance program. Unfortunately, the availability of an EAP has often depended on the employer's size. Small businesses have had difficulty establishing or providing comprehensive EAP services, and as a result have had fewer prospects for effectively confronting work performance problems.

Employee Assistance Program Consortia have filled this gap in some communities and should be expanded. We support legislation, such as the attached proposed bill (attachment B). that would give the Department of Labor authority to award grants to 100 business communities across the country to establish EAP consortia for private businesses, particularly small businesses, and public employers. Grants should be divided among public entities, private programs and corporate consortia. Funds should be made available for start-up and program operations, including identifying service gaps, recruitment, and training. In addition, the Department of Labor should provide technical assistance and training to the programs and evaluate the effectiveness of different consortia models.

The Small Business Administration (SBA) should also play a major role in (1) assisting local chambers of Commerce establish EAP consortia; (2) educating small business owners about drug and alcohol problems in the workplace and the role of EAPs in resolving work performance problems; and (3) encourage insurance companies to examine the cost-savings associated with EAPs and help to underwrite the cost of providing EAP services to small businesses.

3. Protect the confidentiality of EAP clients

Federal legislation to protect the confidentiality of EAP client records should be enacted. EAP professionals recognize that confidentiality is essential for getting individuals in the workforce to come forward for treatment and for providing effective treatment. The confidentiality of EAP records is being compromised in some workforces, however, as employers establish "drug free workplace" policies which suspend, demote or terminate individuals with drug problems. In addition, employers may step up efforts to identify employees who have drug problems through EAP records when the Americans With Disabilities Act (ADA) - which permits employers to terminate any person with a current drug problem - is implemented.

While many EAPs are already required to protect the confidentiality of an individual with an alcohol or drug problem under the federal Confidentiality of Alcohol and Drug Abuse Records regulations, other EAPs (those that receive no federal assistance) are not. In addition, clients who seek services that are not related to drug or alcohol abuse are not protected under existing law. Therefore, the EAP Confidentiality Act, which EAPA has drafted and is modeled closely after the act and regulations for alcohol and drug abuse patients, would be enacted. Without strongly enforced confidentiality protection, EAPs will not be able to effectively address workplace productivity problems and employers will have wasted precious dollars in establishing such programs.

4. Include coverage for treatment of alcohol, other drug and mental health problems in federal health benefits legislation

All federal proposals for minimum health benefits must include explicit coverage for alcohol and other drug dependence and mental health treatment. Alcoholism and other drug dependence and mental health problems are among the leading health problems in our society, and even a minimal insurance package would not be complete without coverage for these diseases. Such coverage is essential to lighten the burden of the state-supported drug and alcohol treatment system, and will reduce overall medical costs. The majority of states require the inclusion and/or availability of insurance for these diseases in all group health plans. Congress should follow the lead of the states by extending minimum coverage to all other states.

5. Support funding for research on drug and alcohol abuse in the workplace

More research needs to be done to shape drug and alcohol abuse program and policy decisions in the workplace. While NIDA and NIAAA have made funds available that would support new research initiatives, the quality of research proposals have be substandard historically. Many researchers do not have the expertise on workplace issues to formulate proposals in this evolving area of specialization. Pressure must be kept on these agencies to keep workforce issues a priority. In addition, NIDA and NIAAA should be encouraged to continue to provide technical assistance for researchers interested in developing solid worksite proposals. Finally, research training funds should be increased to train researchers to develop evaluative, analytic and interpretive techniques applicable to workplace initiatives.

6. Press for Congressional oversight of the operation and effectiveness of employee assistance programs in the federal agencies

All federal agencies are required to have prevention, treatment and rehabilitation programs and services for employees with drug and alcohol abuse problems. The Office of Personnel Management (OPM) has recently conducted a review of the operation and effectiveness of those federal employee assistance programs. According to OPM's report, employees generally had a limited knowledge of the existence of the EAPs and substantial numbers of those who knew about the programs expressed distrust about the EAPs' ability to maintain confidentiality. At the same time, OPM found that employees who were willing to refer themselves to the EAP ultimately benefitted.

Congress should monitor the operation of the federal agency EAPs to ensure that their existence is well publicized and the services provided are as comprehensive and uniform as possible. In addition, Congress must ensure that the federal confidentiality regulations on alcohol and drug abuse patient records regulations are being followed by the federal agencies. Broader publicity and assurances of confidentiality will increase the use of EAPs and result in a more productive workforce.

7. Ensure that the appropriate role and definition of EAPs is included in any legislation concerning drug testing.

Drug testing programs have become readily accepted in many workplaces. While testing may be appropriate in some circumstances, some employers test without regard to whether individuals have a work-related problem that is linked to alcohol or drug dependence and whether test procedures are accurate and confidential. Moreover, many employers need to provide an opportunity for referral to an EAP and rehabilitation prior to termination.

If the Congress passes drug testing legislation, it must incorporate strict test standards, such as those in H.R. 33 (Certification Standards) and condition testing on the establishment of an EAP and provide an opportunity for treatment before termination.

EMPLOYEE ASSISTANCE PROGRAM

An Employee Assistance Program (EAP) shall be a worksite-based program designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns including, but not limited to: health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

The specific core activities of EAPs shall include both of the following: 1) expert consultation and training to appropriate persons in the identification and resolution of job-performance issues related to the employee personal concerns listed above. 2) confidential, appropriate and timely problem-assessment services; referrals for appropriate diagnosis, treatment and assistance; establishing linkages between workplace and community resources that provide such services; and follow-up services for employees who use those services.

DRUG FREE WORKPLACE INITIATIVE FOR THE PRIVATE SECTOR

(a) Findings. -- Congress finds that --

(1) alcohol and drug abuse results in lost productivity, increased on-the-job accidents, and lower worker morale;

(2) an employee assistance program is a worksite-based program designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns including, but not limited to, alcohol, drug, health, emotional, marital, family, financial, legal, stress or other personal concerns which may adversely affect employee job performance;

(3) employee assistance programs are one of the most effective ways to intervene with drug and alcohol users and, thereby create safer, more productive workforces;

(4) several groups have established employee assistance programs to assist small businesses in the private sector provide such services to their employees;

(A) the Workers Assistance Program of Texas is a non-profit corporation that establishes private and public sector employee assistance programs with high employee involvement in program development and oversight;

(B) the Employee Assistance of Central Virginia, Inc. is a community based, private, non-profit organization directed by a board of top level chief executive officers from the businesses community that is designed to bring employee assistance programs to all employees and employers in the region;

(C) The Corporation Against Drug Abuse, a Virginia-based non-profit corporation composed of the chief executive officers of 21 businesses, was created to identify model drug abuse programs for local businesses and to pool technical and financial resources to provide such programs;

(b) Sense of Congress. -- It is the sense of Congress that -

(1) all places of work should be drug and alcohol free;

(2) corporate America should take an active role in assisting employees with drug and alcohol related problems, including problems relating to parenting drug and alcohol-involved or drug and alcohol-exposed children;

(3) employers should take the following steps toward creating a drug and alcohol abuse-free workplace --

(A) establish a clear drug and alcohol abuse-free policy, including published expectations of behavior, employee rights and responsibilities, and actions to be taken in response to an employee found to use illegal drugs or abuse alcohol at the workplace; and

(B) establish an employee assistance program for alcohol and drug abusing employees, which shall include:

(1) expert consultation and training to appropriate persons, including supervisors and managers at all levels and union representatives, in the identification of and intervention with persons who have job performance problems arising from drug and alcohol use or other personal concerns identified in subsection (a)(2);

(2) employee education about the risks associated with alcohol and drug use, the facts surrounding drug and alcohol use by children, including the warning signs for identifying drug and alcohol use by children, the employer's drug and alcohol abuse policy, procedures for handling impaired workers, and assistance available for employees and family members, where appropriate, with drug, alcohol or other problems that affect job performance;

(3) confidential, appropriate and timely problem assessment services and referrals for appropriate diagnosis, treatment and assistance;

(4) establishing and maintaining linkages between workplace and community resources that provide services identified in subsection (B)(3); and

(5) follow-up and aftercare services for employees who use the services identified in subsection (B)(3).

(c) Business Participation in Drug and Alcohol Prevention and Intervention.

(1) The Secretary of Labor shall identify 100 business communities containing small business groups in the United States and establish a grant program that awards one entity in each region up to $ 100,000 to establish a program modeled after those identified in subsection (a) to provide employee assistance program services to private businesses, particularly small businesses. The grants may be proportionately divided among public entities, private programs and corporate consortia, as described in subsection (a).

(2) The Secretary of Labor shall consult, provide technical assistance and training to and evaluate the programs to determine the effectiveness of different models in assisting small businesses access employee assistance services.

(d) Authorization of Appropriations. -- There are authorized to be appropriated $ 10 million to carry out subsection (c)(1) and $ 2 million to carry out subsection (c)(2).

J·D·Hutchison&Associates
Labor ◆ Management Relations

March 11, 1991

Honorable Ron Wyden
U.S House of Representatives
1440 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Wyden:

Recently, I read an article in the Oregonian about the problems Rapid Bind Inc. of Portland was having in establishing its Drug and Alcohol Testing program.

According to the article, Mr. Goche testified before your Small Business Subcommitee on Regulation, Business Opportunities and Energy. I know what Mr. Goche says is true. The availability of small businesses to implement these programs has been limited. However as you can see from the enclosed news release, we in Oregon anyway are trying to help.

Very truly yours,

J. D. Hutchison

Enc.

cc: Honorable Bob Packwood
Honorable Mark Hatfield
Honorable Les AuCoin

141 N. State St. #240
Lake Oswego, Oregon 97034
(503) 635-4475

FOR IMMEDIATE RELEASE
March 4, 1991

Contact:
J. D. Hutchison
141 N. State St., #240
Lake Oswego, OR 97034
(503)635-4475

The consulting firms of LJK Associates and J. D. Hutchison & Associates have formed a partnership to provide Drug and Alcohol Testing and Employee Assistance programs to employers in all industries in the States of Oregon and Washington.

Dr. Leslie Koralek, who is CEO of LJK Associates, has extensive experience as a Drug and Alcohol Counselor. In addition Dr. Koralek has, over the past 11 years, assisted many employers in various industries to select and implement Employee Assistance programs.

J. D. Hutchison was Labor Relations manager for Hoffman Construction Co. before forming his consulting practice in Lake Oswego. He was responsible for establishing and administering Hoffman's Drug and Alcohol Testing program and serves on several boards and committees pertaining to drugs and alcohol in the work place.

"The benefits of an EAP are enormous to the employer as well as the employee," said Dr. Koralek. "Returns are between $3.00 to $5.00 for every dollar invested through lowered health insurance and workers' compensation costs. Employee Assistance Programs have been in existence since the late 1940's and are based on the premise that the future success of business and industry depends on the effective management of employees," said Dr. Koralek.

"An Employee Assistance Program is meant to be a resource outside the work place where employees and their families can go to get confidential help with any number of problems which could affect job performance. Some of the problems covered are: alcohol/drug abuse, family dysfunction, personal/emotional concerns, occupational stress, behavioral concerns, occupational adjustment, marital discord, senior services, legal problems, and literacy. We feel the partnership of these two successful firms will bring a much wider availability of these programs to the employers of Oregon," Dr. Koralek continued.

J. D. Hutchison, who was appointed by Governor Goldschmidt to the original "Mahonia Hall" Labor/Management committee that completely reworked the State of Oregon's workers' compensation law in 1990 and who currently serves on the permanent Labor/Management Workers' Compensation task force for the State, says "The main value of drug and alcohol testing is a dramatic reduction in workers' compensation costs. We are told up to half of serious injuries and fatalities in the work place are drug/alcohol related. If the worker who is going to get hurt or killed is screened out before he goes to work, the accident never occurs. The savings in human suffering and dollar impact is incredible. Emphasis can then be placed on rehab through the EAP. One goal of the partnership will be to offer these programs to small businesses who may not have the resources to employ an administrator of these programs in house." Another goal of this partnership will be to provide the most appropriate and comprehensive programs individualized to the employers' needs," Dr. Koralek added.

LEGAL
ACTION
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March 28, 1991

Graydon Forrer
Staff Assistant
Subcommittee on Regulation, Business Opportunities,
  and Energy
B363 Rayburn House Office Building
Washington, D.C. 20515

Dear Grady:

I'm writing to thank you for meeting with Tom Delaney and me about our mutual interest in helping small businesses address drug and alcohol problems. We look forward to working with you to accomplish the initiatives that we discussed.

I also wish to repond to your request for a summary and critique of the four model workplace bills developed by the Office of National Drug Control Policy (ONDCP). Enclosed is a summary of the bills that was published in the Legal Action Center's monthly newsletter, ActionWatch, and a copy of the bills. The following is a critique of each. I apologize for the delay in sending this to you.

A. Workforce Drug Testing Act The proposed bill has some strengths and weaknesses in our view.

The strengths of the bill are:

1. Section 4 requires the development of a written policy that outlines the circumstances of testing, standards of conduct, test procedures, drug to be screened, procedures to resolve disputes about test results, sanctions for violations of the standards of conduct and a description of available treatment and rehabilitation programs. The policy must be adopted sixty days prior to testing to provide notice to employees and applicants. However, on the down side, this provision does not required actual notice of the policy by distribution to each employee and applicant: the policy need only be made available for review. Without individual distribution, there is no way to ensure that all individuals will know about the policy.

2. Sections 4(C) and 4(D) require that samples be collected in a way to protect the individual's privacy and

handled under strict forensic chain of custody procedures. These protections are necessary to ensure accurate testing.

3. Section 4(E) requires that testing be done by a qualified laboratory certified for forensic urine drug testing and that positive tests be confirmed by gas-chromatography-mass spectrometry (GC/MS) or another comparably reliable test. These are important provisions to ensure accurate testing. However, on the down side, the provision does not require that the forensic testing standards established by the National Institute on Drug Abuse be implemented in all testing programs. The provision would permit other standards developed by State Departments of Health to be used. In our view, the NIDA standards should be the only permissible testing and lab certification protocol. The NIDA guidelines were developed by the leading toxocologists in the country and have become accepted as the gold standard for testing. It seems to be a waste of time to develop different standards and will open the door to less rigorous testing procedures.

4. Section 5 seeks to protect the confidentiality of drug testing information, which is very important. However, additional protections could be included, such as limiting access of drug test results to specific individuals who have a need to know the information and storage of the information in confidential files.

The weaknesses of the bill, in addition to the comments noted above, are:

1. Section 4 permits, but does not require, employers to give employees an opportunity to get treatment prior to being terminated. In our view, testing should not be permitted unless an EAP has been established and individuals are given an opportunity for rehabilitation prior to termination. Several states have passed testing legislation that imposes that requirement.

2. The bill does not require employers to give employees and applicants an opportunity to obtain all test information or challenge a drug test result. While Section 4 requires employers to identify in their policy a process for resolving disputes, employers could theoretically preclude all challenges or provide a meaningless appeal process.

3. Section 3 would protect employers against virtually all liability if they comply with the bill's testing and confidentiality standards. Employees and applicants could only seek damages if an employer took action based on an

erroneous test result and acted in bad faith or defamed an individual with malice. Malice and bad faith are almost impossible to prove, particularly because the bill establishes a presumption of good faith if the employer follows the testing standards. In our view, to ensure accurate testing, the bill should give employees and applicants an affirmative right of action to challenge any violation of testing or confidentiality standards or any adverse action taken on the basis of an erroneous test result. In addition, the bill should not preclude suits under other provisions of law.

4. The bill would give employers complete discretion in determining who gets tested and under what circumstances. In our view, testing is most appropriate when it is used to determine whether an individual's declining work performance is associated with drug use. The theory underlying EAPs is that trained managers can identify individuals who are having work performance problems and can refer those individuals to an EAP professional who can determine the source of the problem. Drug testing may be appropriate at that time to confirm a suspected drug problem.

B. Workforce Drug Use Prevention Act As noted in the summary, the Workforce Drug Use Prevention Act is modeled after the Drug-Free Workplace Act of 1989. There are, however, a few important distinctions that create some problems with this bill.

Unlike the federal law which requires contractors and grantees to report to the appropriate federal agency employees who have been convicted of drug-related crimes that occured at the worksite, the proposed state bill requires employers to impose sanctions on employees who manufacture, distribute possess or use drugs on the worksite or while performing duties for the contractor or grantee. Thus, conviction of a crime is not required for the employer to take action. The bill would also permit employers to refer individuals involved in drug related activity on the worksite to law enforcement officials for criminal prosecution.

While employers can certainly take action against employees who are involved in drug related activities on the worksite, there are serious constitutional rights involved if employers begin to gather evidence and refer individuals for criminal prosecution on the basis of that evidence. Protection of due process and search and seizure rights must be considered.

In addition, as a policy matter, the proposed bill, like the federal bill, misses the mark by not dealing with alcohol use and by not requiring rehabilitation prior to termination for employees who have drug and alcohol problems. It is important to note that the commentary to the proposed bill (Tab B) states that sanctions can be waived if an employee participates in a rehabilitation program, but the bill's language does not contain this waiver and does not require employers to provide an opportunity for treatment.

C. Anti-Drug Use State Licensing Act This proposal is similar to the "user accountability" provisions adopted in the Anti-Drug Abuse Act of 1988. It would impose a form of civil penalty -- loss of a professional or trade license -- in addition to a criminal penalty on persons convicted of drug distribution and trafficking crimes. (The federal provision permits courts to deny convicted individuals of any federal benefit or loan other than an earned benefit or entitlement.)

This proposal is stiffer than the federal provision in several respects. First, the civil penalty is much more onerous. Loss of a license -- even for a brief period of time -- will preclude individuals from returning to the workforce after their release from prison or jail. It is undisputed that employment is one of the most essential factors is preventing recidivism.

Second, the federal provision permits courts to suspend the denial of federal benefits if an individual is participating in a treatment program or was unable to enter a program because of a lack of available space or inability to pay. This proposal, on the other hand, permits the court to lift the suspension in most cases only after the requisite period of time and successful completion of a treatment program. Considering the severe shortage of treatment, many individuals would not get their licenses back for a significant period of time.

Finally, as a policy matter, this approach is not an effective deterent for individuals who have a drug or alcohol dependence problem. Such individuals need treatment in order to stop their criminal behavior and will not be detered from criminal activity, which supports their habit, simply out of a fear that they will lose a license. Certainly, individuals should be accountable for their criminal activity. But this proposal goes beyond the traditional punishment and denies individuals the ability to survive after they've paid their dues.

D. State Employee Drug-Free Workplace Act This proposed bill is similar to the drug free workplace program implemented in the federal agencies pursuant to Executive Order 12564. This bill, like the proposed drug testing bill has some strengths and weaknesses.

The strengths of the bill are:

1. The bill would require the state government to establish comprehensive employee assistance programs and to give employees a sixty day grace period to come forward for treatment before the commencement of a testing program. In addition, individuals who come forward for treatment, comply with the EAP counseling program and refrain from future drug use are not subject to discipline. Moreover, individuals who are identified as a drug user through testing are given an opportunity to keep their job if they get treatment and refrain from drug use.

This approach provides an incentive for individuals with drug and alcohol problems to come forward for treatment without fear of losing their job. In our view, this is the most effective way to create a safer, more productive workforce. It is also consistent with the standards established in the Americans With Disabilities Act.

2. The bill provides for some procedural safeguards in its proposed drug testing program, but has many of the limitations identified above. (See Point A.) Most important, the bill would permit states to establish testing standards rather than require compliance with the NIDA guidelines.

The weaknesses of the bill are:

1. The bill's standards for testing applicants and employees in sensitive positions do not conform to Fourth Amendment search and seizure standards. (See Section 6) Fourth Amendment standards apply because the state is conducting a search and seizure each time it conducts a drug test. The Supreme Court has established standards for when a drug test can be conducted without individualized reasonable suspicion. Testing of all applicants, regardless of the job sought, does not conform to constitutional standards. It is also unlikely that random testing of all individuals who hold jobs that require a high level of trust would be constitutional.

2. The bill also seeks to regulate off-duty behavior. Under caselaw in some states, there must be some showing that the off-duty behavior affects an employee's ability to

do the job in order to be able to take action against the employee.

* * * *

I hope this puts an end to the mystery of the ONDCP model workplace bills. Within the next week, we will be sending you the EAPA 1991 Legislative Agenda and a summary of EAPA's proposals for reauthorization of programs within the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) and the Department of Labor's program. Those documents will summarize the initiatives we discussed at our meeting.

Again, thank you for your interest. We look forward to working with you. Please feel free to call me at 202/544-5478 if you have any questions.

Sincerely,

Ellen

Ellen M. Weber
Legislative Counsel

Encl.

In the area of prevention, ONDCP endorses teacher training in substance abuse education.

B. Building A Drug-Free Workforce

Building A Drug-Free workforce provides four "model" bills that ONDCP believes will help achieve a drug-free workplace. ONDCP has proposed these bills, in part, to encourage states to eliminate existing restrictions on drug testing and to give employers broad discretion in conducting tests without fear of litigation. Many of the proposals overlap the recommendations in the State Drug Control Status Report.

Workforce Drug Testing Act: This proposed bill, which is the centerpiece of the package, would give employers total discretion in deciding who could be tested and would protect employers against lawsuits challenging their drug testing programs if they implement certain procedural safeguards. The bill would permit employers to require individuals who test positive to participate in a treatment program as part of disciplinary action, but would not require employers to give individuals an opportunity to get treatment before facing disciplinary action or termination.

The bill would eliminate most employer liability if the employer conducts testing pursuant to a written plan that identifies (1) when testing will be conducted, (2) the sanctions that can be imposed for a positive drug test, (3) available treatment and rehabilitation programs, (4) procedures for conducting the testing program and resolving disputes, and (5) confidentiality protections. In addition, the employer would be required to use forensic procedures when collecting and testing samples, to confirm positive results by the most reliable test procedure and to have positive samples reviewed and certified by a physician trained in substance abuse.

If an employer implemented the above procedural safeguards, he or she could only be subject to suit for (1) unreasonably relying on an erroneous test result and taking action based on that erroneous test and (2) defaming an individual by knowingly and maliciously disclosing erroneous test results.

Workforce Drug Abuse Prevention Act: This proposed bill is modeled after the federal Drug-Free Workplace Act of 1988 to ensure that state contractors and grantees operate under requirements consistent with those that apply to federal contractors. The bill would require all companies or individuals receiving state grants or contracts to adopt and distribute a written policy that (1) prohibits the unlawful manufacture, distribution, possession or use of a controlled substance by employees at the worksite or while performing duties for the grantee or contractor; (2) identifies the sanction for violating the prohibition, up to and including termination and referral for prosecution; (3) identifies the criminal sanctions for violating the prohibition; and (4) identifies the health risks associated with drug use and describes the counseling and rehabilitation programs that are available to employees. Contractors and grantees would also be required to certify that they have implemented such a policy. Failure to implement the policy could result in suspension of payments, termination of the contract and debarment.

Anti-Drug State Licensing Act: This proposed bill would mandate the suspension and revocation of professional and trade licenses for persons convicted of drug-related crimes. The bill would require individuals who are convicted of use, possession and distribution crimes to identify at the time of sentencing any professional licence they hold. The sentencing court would then be either permitted or required to suspend or revoke the license for a particular time based on the severity of the crime.

Under the proposal, individuals who are convicted of possession or use of a controlled substance could on the first occasion have their license suspended or restricted. For a second conviction, a court would be required to suspend a license for a mandatory one-year period. For a third or subsequent conviction, a court would be required to suspend a license for a mandatory five-year period. The suspension could be lifted after the mandatory period if the individual completes a rehabilitation program.

The penalties would be significantly stiffer for individuals convicted of distribution crimes. Upon a first conviction, the court would be required to suspend a license for a period of one to five years. Upon a second conviction, the court would be required to revoke the license. Under the proposal, the revocation decision could not subsequently be reversed.

State Employee Drug-Free Workplace Act: This proposed bill tracks the federal drug-free workplace policy implemented in all federal government agencies pursuant to Executive Order 12564. It would require state governments to establish a policy that prohibits drug use on or off the job and that facilitates the identification of individuals with drug problems. The bill would also promote the establishment of employee assistance programs and inclusion of coverage for drug treatment in insurance programs for state employees.

The proposed bill would require state governments to implement a drug testing program for employees in sensitive positions and for all applicants and to establish employee assistance programs for the identification and referral for treatment of individuals with drug problems. The bill would require state agencies to discipline any individual who is found to use illegal drugs unless the individual identifies him- or herself as a drug user, obtains rehabilitation through the employee assistance program and abstains from future drug use. An individual who is identified as a drug user could be removed from service if he or she refuses to obtain counseling or does not refrain from drug use.